GOVERNMENT OF THE UNITED KINGDOM

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THE GOVERNMENT

OF THE

UNITED KINGDOM

ITS COLONIES AND DEPENDENCIES

BY

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PREFACE.

THIS work is intended, primarily, to meet the requirements of candidates preparing for the Teacher's Certificate Examination. The author is, however, not without hope that it may be of service to others who desire to obtain within a small compass an outline of the development and present working of the Government of the country.

The scope of the work did not permit anything in the nature of independent or original research, but the authorities dealing with the various subjects considered have been carefully read and compared, while frequent reference, especially in matters of local government, has been made to the statutes of the realm which govern their present position. Among the works consulted the author wishes in particular to express his acknowledgments to the following, to which the reader is referred for further information than it was possible to give in these pages: Anson, *Law and Custom of the Constitution*; Blake Odgers, *Local Government*; Dicey, *Law of the Constitution*; Ilbert, *Government of India*; Redlich and Hirst, *Local Government in England*; Stubbs, *Constitutional History*; Taswell-Langmead, *English Constitutional History*; and the *Constitutional* and *Statesman's Year Books*.

The author has also to acknowledge the assistance of Mr. W. D. Aston, Fellow of Downing College, Cambridge, in passing the work through the press.

PREFACE TO THE FOURTH EDITION.

A THIRD edition of this book was issued in January 1917, but the numerous and important changes in the working of the constitution have rendered a Fourth Edition already necessary.

The book has been thoroughly revised so as to bring it fully into accord with the present state of affairs and with the most recent and authoritative views, and it is hoped that it will be now found in every respect up to date.

In the third edition an appendix on the development of State activities was inserted: this appendix has now been rewritten and considerably enlarged.

The revision for the third edition was carried out by the Rev. A. W. Parry, M.A., D.Sc., that for the fourth edition by I. G. Powell, M.A.

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PART I.

INTRODUCTORY.

CHAPTER I.

THE BRITISH CONSTITUTION.

§ 1. **The Nature of a State.**—An independent civilised state at the present day must possess certain marks or characteristics. Thus it must be permanently established and organised for the purposes of government. It must be in possession of a definite area of territory, and it must have attained a certain standard of civilisation. It must also be free from all external control. The United Kingdom of Great Britain and Ireland satisfies these conditions and therefore forms a state. It contains within itself several separate nations, and its organisation is complicated by the fact that various colonies and dependencies are subject to it. These are considered to form part of the territory of the parent state, and, as will be seen later, are subject in the last resort to the authorities which control the government of the United Kingdom.

§ 2. **The Functions of a State.**—Every modern state has a complex organisation for the purposes of government. In this organisation it is possible to distinguish three separate functions of the state. These are the legislative, the executive, and the judicial functions.

Every state has to secure the maintenance of order in the area which it controls. For this purpose it lays down rules which must be observed by its inhabitants. These rules determine what may and may not be done by the latter and regulate the methods in which certain transactions between them are to be conducted. They also impose, in some cases, positive duties which must be performed by those on whom they fall under pain of punishment. These rules which a state lays down for the guidance of its subjects are called laws. The process by which they are formulated is termed legislation, and the persons who determine of what they shall consist are collectively called the Legislature.

Legislation, however, is not the sole function of a state. After rules have been laid down for its subjects to follow, the state must see that they are obeyed and that any questions which arise concerning their meaning are determined. It must, therefore, appoint persons to decide these questions. Such persons are called judges or, collectively, the "Judiciary," and the function they exercise is called the judicial function.

Again, it is necessary that there shall be some person or persons in a state who shall appoint these judges, shall carry on its dealings with other states, and generally shall organise its affairs. Such a person or body of persons is termed the "Executive."

§ 3. **The Government of a State.**—It is possible for all these various functions to reside in one person or body of persons, but as a general rule they are more or less separated. It is obvious that they are intimately connected with each other and that the smooth working of the government of the state will depend on the proper adjustment of the relations of the various bodies which exercise them. The manner in which this adjustment is

made differs in various states. In an autocratic state, *i.e.* one in which the arbitrary will of the monarch is the determining factor in government, little adjustment is or should be necessary. But in a democratic state, *i.e.* one in which the inhabitants as a whole decide through their representatives the manner in which they shall be governed, the adjustment frequently becomes a matter of the utmost nicety. The rules which determine the formation, powers and mutual relations of the various bodies which exercise the functions of government are known collectively as the "Constitution" of the state.

§ 4. **Forms of Constitutions.**—A constitution may be the result of a continuous growth, as in the case of that of Great Britain, or it may have been adopted as a whole at one particular time, as in the case of Belgium and the United States. In the former case it must be gathered from various sources—custom, statutes and decided cases; but in the latter it is contained in a single document like an ordinary law.

Another distinction between constitutions can be found in the methods by which they are altered. In some countries every alteration of the constitution must be made in a particular way different from that in which laws are usually made. Such a constitution is called "rigid." Most foreign constitutions are of this type. In the British constitution alterations can be made in exactly the same way that ordinary laws are passed. It is therefore termed "flexible."

A third classification of constitutions might be made according to the relations of the executive and the legislature. In some the legislature itself appoints and dismisses the executive; in others it does not do so. To the former type belong the constitutions of Great Britain, Belgium and France, to the latter those of Germany and the United States.

§ 5. The Flexibility of the British Constitution.—As has been pointed out, the British Constitution is "flexible." This fact has had an important influence on later English history. Since every part of the Constitution is capable of alteration by the ordinary methods of legislation, it follows that those who have desired to make any change in the Constitution have endeavoured to do so in the same way that they would attempt to alter any other law. They have had no need of revolutionary methods, because the machinery for a change was ready to their hand. The only force which could prevent the accomplishment of their aims was the force of public opinion as represented in Parliament. Once they had obtained the majority of the electors of the country permanently on their side they were bound to achieve their object within a few years in the ordinary course of parliamentary legislation. If they failed to convince their countrymen of the desirability of the change they would also fail with revolutionary methods. The consequence is that Great Britain has been free from the revolutions which the rigid constitutions of other countries have provoked, while at the same time its constitution has undergone considerably greater change.

On the other hand, it is true that the maintenance of the Constitution depends on the good sense of the electors. It is from a fear that this will not be always in evidence that the safeguards of a rigid constitution have been introduced in other countries. But it should be remembered that ultimately every government depends on the favourable opinion of its subjects, and that if these permanently desire any particular thing they have the power to obtain it. All that these safeguards can be, therefore, is a check on hasty and ill-considered measures. In the British Constitution it is presumed that this function is discharged by the House of Lords; but the powers of that body have

been largely curtailed by the Parliament Act of 1911, and the institution of an effective second chamber is one of our most serious political problems.

§ 6. **The Sovereignty of Parliament.**—According to Professor Dicey the two main characteristics of the British Constitution are the "legislative sovereignty of Parliament" and the "universal rule or supremacy throughout the constitution of ordinary law."

Parliament has the power to pass or repeal any law whatever. Thus it can alter the succession to the Crown or the established religion of the land; it can change the Constitution and extend its own duration; it may provide for the compulsory purchase of private property, and may validate a marriage previously illegal. Indeed it has done all these things at various times. Perhaps the most striking instance of its power is to be found in the passing of the Septennial Act in 1716 Originally elected for three years only, the Parliament of 1715 passed this Act by which it not only fixed the duration of future Parliaments at seven years but even extended its own duration by four years.

On several occasions Parliament has endeavoured to limit the power of its successors by passing laws declared to be unchangeable. Thus in the Acts of Union with Scotland and Ireland certain provisions were intended to be immutable and to form an essential and fundamental part of the Union. One of such provisions declared the permanence of the Established Church of Ireland. Nevertheless that Church was disestablished in 1869, which fact is a clear witness to the impossibility of limiting the absolute sovereignty of Parliament. If it were limited in any way it would be no longer sovereign.

It is an essential feature of the sovereignty of Parliament that no other body in the state has any power of legislation

independent of it. At one time, as will be seen later, such a jurisdiction was claimed and exercised by the King in Council, but these days are long since past. At the present time every body within the British Empire which exercises any legislative function is subordinate to the British Parliament. This is so whether that body is the legislature of a colony or a district council. The application of this principle will be seen more clearly when the exact relations of the colonies to the mother-country come to be considered.

§ 7. **The Rule of Law.**—Every person in the United Kingdom is subject to and must obey the laws of the land. It is true, indeed, that the Monarch is an exception to this rule and that he "can do no wrong." But as nearly every official act of the Monarch must be done through some agent, and these agents are themselves personally responsible for the legality of the acts they do, this exception is more apparent than real.

No person is in a privileged position in this respect. The persons who compose the government of the day cannot do just as they please, but must exercise their powers strictly in accordance with the rules which Parliament has laid down. In some cases, such as extradition, where it is necessary for the well-being of the State, Parliament has given the ministers of the Crown a discretion, but it must be noticed that this discretion is itself the gift of the law and is no exception to the general rule. If any executive officer exceeds his powers, a complaint may be at once made by the person aggrieved in the courts of law, and if it is proved that the act in question is not strictly in accordance with the law the offender will be condemned. However wide the powers of the executive may be, therefore, one can never say that they are unlimited.

Again, it is to be noted that every man is subject to the same tribunals. There is not one court for the official and

another for the citizen, as is the case in certain continental countries. But the same courts have to determine the disputes of a citizen with the executive as those which determine disputes between citizens. It is therefore obviously desirable that the courts should be free from the control of the executive. As will be seen later, this freedom was attained in 1701.

Again, there is no right which a citizen possesses which he cannot maintain in the courts of law. Wherever there is a right there is a means of obtaining redress for its infringement. Thus it has been laid down by the courts that every person has a right of action against anyone who unlawfully interferes with his personal liberty. That is to say, unless the arrest of any person can be shown to be justified by the law, he is entitled to damages from the person who arrested him, and is further entitled to be set at liberty.

This latter right is enforced, if necessary, by a writ of *habeas corpus*. By this writ the court can compel any person who is imprisoned to be brought before it, and thus find out the cause of his imprisonment and, if necessary, release him. As the courts are independent of the executive, this writ provides an absolute bar to any proceeding on the part of the executive in the nature of imprisoning its political opponents. If for the good of the State it is desirable at any time in periods of political excitement that political partisans should be imprisoned, it is necessary for the executive to obtain power beforehand from Parliament for this purpose. Power is given by passing an Act of Parliament suspending the operation of the *habeas corpus* Acts in cases where a Secretary of State, or other minister named in the Act, shall declare that a person is arrested on suspicion of treason. Such an Act was passed in 1881 with regard to Ireland.

The right of freedom of speech, again, is nothing more than this: that no man can be prevented from saying anything anywhere unless he infringes some rule of the law either in what he says or in the way he says it. Anyone, whether he be policeman or private citizen, who wishes to interfere with the utterance of another must be prepared to show that that utterance has in some way been forbidden by the law.

§ 8. **The Conventions of the Constitution.**—The Constitution consists of the various rules which govern the relations of the legislature, the executive, and the judiciary and determine their composition, powers, and methods of working. These rules are of two kinds. Some are definitely laid down by the law. Thus the Act of Settlement declares that the judges hold office for life on good conduct. Rules of this kind are termed laws of the Constitution, and will be enforced by the courts of law. On the other hand, there are some rules observed habitually, which are not laid down by any law, and which could be broken without any penalty being incurred for the actual breach. To this class belong the maxims that "Ministers resign office or dissolve Parliament when they have ceased to command the confidence of the House of Commons," and that "Parliament ought to meet at least once a year."

Such rules are termed "Conventions of the Constitution," and generally refer to the exercise of the King's prerogative on the advice of the Cabinet, or of the privileges of the Houses of Parliament. In reality they are understandings observed in the conduct of the government of the country by which the will of the nation is carried out. There is, for example, no method legally to compel a ministry to resign or dissolve when they are defeated on some vital question in the House of Commons,

but unless they do the one or the other they will continue in office without the support of the nation as a whole.

Why, then, are these conventions observed? Do they rest on nothing more than the good faith of those who conduct the various institutions of government? The answer to this question is found in the fact that although the breach of these conventions is not of itself contrary to the law, yet the inevitable consequence of any breach must be to compel the convention breaker to go further and break the actual law of the land and thus come into conflict with the courts. An example of this is to be found in the rule that Parliament must meet at least once a year. If it did not, those taxes that are voted yearly would cease to be due and it would become difficult to carry on the administration without raising money unlawfully. Again, the annual Army Act which legalises for a year the existence of a standing army would cease to operate and the maintenance of that portion of the country's defensive forces would become impossible without contravening the law of the land as expressed in the Bill of Rights.

If Ministers refused to resign or advise a dissolution after having lost the confidence of the House of Commons, their opponents in that House could refuse to pass any measure they introduced. This would have an effect similar to that produced by the non-meeting of Parliament for a year and would impel the Ministry to illegal practices if they determined to remain in power. As a matter of fact such a crisis would not arise, because the King would dissolve Parliament in such a case whether his ministers so advised or not.

§ 9. The Growth of the Constitution.—As has been already stated, the British Constitution is not embodied in one single document, but is the outcome of gradual growth and development. Some of its features at the present day

may appear archaic and to have outlasted the measure of their utility. It should be remembered, however, that the British Constitution resembles a vast machine which requires the most delicate and complicated adjustment, so that it would be unwise to condemn at once as useless any provision that to the casual observer seems of little value. An instance of this occurs, as will be seen later, in the composition of the various boards which have developed from committees of the Privy Council.

The history of the Constitution can be traced from a time when the King did everything, until at the present day he does nothing personally. Theoretically, even now, the King is the source from which all the functions of government spring. Laws are passed by the "King's most Excellent Majesty by and with the advice and consent of" Parliament. Executive acts are done in the King's name, and the heads of the administrative departments are his ministers. Lastly, the King is the fountain of justice, and the judges are appointed by him to keep his peace and to dispense justice in his name. This theoretical aspect of the functions of government illustrates, better perhaps than anything else, the unbroken character of the development of the British Constitution. The history of that Constitution is indeed the history of the gradual limitation of the King's power in the various spheres of government, until in all branches of the administration it can now be exercised only in accordance with a settled procedure laid down and determined by the laws and conventions of the Constitution. The English King, however, has never been an autocratic despot. There never has been a time when he was not limited to some extent by a council of the nation.

It is in the development of this council and the gradual acquisition by it of the control over matters which were at

first almost wholly in the hands of the King that the clue is to be found for tracing the development of the Constitution. The first step was the acquisition of the control over taxation. This, once acquired, led naturally and of necessity to the control over legislation. The control over the Executive was the last to be acquired, but is now as complete as the control over taxation and legislation.

In the following pages the Legislature, the Executive, and the Judiciary will be separately treated. First of all their gradual growth and development will be traced, and then their composition and method of working at the present day will be considered. Some account will also be given of the nature and working of Local Government in England and Wales, and the book will conclude with a consideration of the relations which exist between the United Kingdom and its colonies and dependencies.

PART II.

THE LEGISLATURE.

CHAPTER II.

THE TITLE TO THE CROWN.

§ 10. The Crown before the Tudors.—The succession to the Crown of England has rested partly upon election by the popular assembly of the day and partly upon hereditary right. At times the views of kingship which these titles embody have been in conflict, but as a general rule each king has endeavoured to support his claim to the throne on both these grounds. To-day the title of Edward VII. rests upon the fact that he is the direct heir of Sophia, the widow of the Elector of Hanover, and that the Crown of England was settled on her heirs by the Act of Settlement, 1701.

Before the Norman Conquest the kingship was elective, but the choice of the Witan (p. 16) was confined to the royal family, and theoretically the eldest son of the late King was preferred. In practice, however, the Witan did little more than accept as king the member of the royal house whom the nomination of the late King or his own personal influence imposed on them. A king could be deposed for bad government, but in such cases the Witan did little more than recognise officially the result of a

successful rebellion. With the introduction of feudalism into England the King was regarded as supreme landholder, and hence the idea that the Crown ought to descend like an estate in land, or, in other words, by hereditary right, grew stronger. Yet Henry II. was the first king after the Conquest who had a good hereditary title, and the reign of Edward I. was the first to begin before his coronation.

The Wars of the Roses were really dynastic quarrels between the Lancastrians and the Yorkists to determine the right to the Crown. In this period the desire of the various kings for the support of a Parliamentary title was most marked. In 1404 and 1406 Parliament settled the Crown on Henry IV. and his heirs; in 1460 the title of Henry VI. was recognised for his life, and in 1484 the Crown was settled on the heirs of Richard III. The fact, however, that the last two of these settlements were but of short duration shows the weakness of Parliament at this period.

§ 11. **The Tudors and the Stuarts.**—The period of, roughly, two hundred years which is covered by these reigns shows the gradual triumph of the principle of parliamentary choice over that of hereditary right. In 1485 the Crown was settled on Henry VII. and his heirs, while during the reign of Henry VIII. the succession was regulated on several occasions. The most important of these was in 1536, when Parliament gave the King power to nominate his successors by will. After his three children, Edward, Mary, and Elizabeth, and their issue, Henry directed that the Crown should be held by the descendants of his younger sister Mary, Duchess of Suffolk.

But on the death of Elizabeth, James VI. of Scotland, who was the descendant of Henry's elder sister Margaret, came to the throne, and his title was confirmed by an Act

of Parliament which recited that he was entitled by descent. No further question arose as to the succession until James II. fled in 1688. The interregnum which occurred during the Commonwealth must be regarded as an emphatic protest against the misuse of the royal power under the doctrine of the divine right of kings. It foreshadowed the final triumph of the elective theory of kingship in 1688. It should be noted that, in law, the reign of Charles II. dates from 1649, when his father was beheaded.

§ 12. **The Revolution Settlement.**—In the cases of Edward II. and Richard II. the abdication or resignation of the Crown, though in fact compulsory, was in form voluntary. In like manner, by the Declaration of Right, 1689, it was stated that James II. had abdicated the government and that the throne was thereby vacant. The Crown was then given to William Prince of Orange and Mary his wife, who was the daughter of James II. The Declaration of Right was embodied in the Bill of Rights 1689, which provided for the succession after the deaths of William and Mary. Further provision for the succession had, however, to be made owing to the fact that the succession established by the Bill of Rights showed signs of failure. This was done finally by the Act of Settlement 1701, which made the Crown descend to the heirs of Sophia, the Dowager Electress of Hanover and granddaughter of James I., being Protestants.

It had previously been provided by the Bill of Rights "that every person that is or shall be reconciled to, or shall hold communion with the See or Church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded" from and incapable of inheriting the Crown, and that in such cases the people of the realm should be absolved from their allegiance.

Further, that every monarch on coming to the throne should make a declaration against transubstantiation and other Popish doctrines. These safeguards for a Protestant succession were confirmed by the Act of Settlement, which also provided "that whosoever shall hereafter come to the possession of this Crown shall join in communion with the Church of England as by law established." It is in accordance with these rules laid down by Parliament that the succession to the Crown of England is now determined.

By the Act of Union with Scotland in 1707 the two kingdoms of England and Scotland were united as Great Britain, and it was provided that the succession should be the same as that laid down by the Act of Settlement. A similar provision was made in the Act of Union with Ireland in 1800. The title to India and the British Colonies and Dependencies follows the same rule.

By the Royal Marriage Act, 1772, the Sovereign's consent is necessary to the marriage of any descendant of George II. except the issue of princesses married into foreign families. But if over twenty-five, such descendant can marry without consent after giving twelve months' notice to the Privy Council and in the absence of Parliamentary disapproval. Unless these formalities are observed the marriage is invalid, and the children of such a marriage are therefore not eligible for the Crown.

In the event of an infant succeeding to the throne, or of the King's becoming insane, a Regent is appointed. In the former case his appointment is usually provided for beforehand by Act of Parliament, in the latter the practice does not appear to be quite settled.

§ 13. **Allegiance and Treason.**—Allegiance is the duty to be faithful to the King owed by every person residing in the country. On leaving the country an alien becomes

free from this tie, although a British subject does not. A man can now divest himself of his character of a British subject under the British Nationality and Status of Aliens Act, 1914,[1] by becoming the subject of another country, or by a declaration made under the provisions of the Act. The same Act permits an alien to become a British subject on certain conditions, the chief of which is five years' residence in Great Britain. The Home Secretary has considerable power of discretion as to allowing any alien either to enter the country or to become a naturalised British subject.

Treason is the violation of allegiance, and consists of the offence of not being faithful to the King and the State. The definition of treason has varied considerably from time to time, but at the present day it is practically confined to (1) acts or plots to kill, injure, or restrain the King, (2) making war against the King, (3) adhering to the King's enemies. At the beginning of Queen Victoria's reign several attacks were made upon her by lunatics and others. These outrages strictly constituted treason, but an Act of 1842 enabled them to be treated as ordinary offences, and so prevented the assailants from obtaining the notoriety which a trial for treason would have afforded. Another Act some six years later provided for a similar mode of treatment in the case of certain offences against the State which, while being treason under the old law, were not directed against the person of the King, such as a conspiracy to levy war or the incitement of foreigners to invade the kingdom. But the old law is not repealed, and in case of necessity it is still possible for any of these offences to be treated as treason.

[1] This act repealed the Naturalisation Act of 1870 and consolidated and amended the law on the subject.

CHAPTER III.

THE FORM OF THE HOUSE OF COMMONS.

§ 14. **The Anglo-Saxon Witan**[1] (*i.e.* wise men) has been long generally, though erroneously, regarded as the stock from which our present Parliament has sprung. How little truth there is in this idea is shown by the fact that the Witan was in no sense a representative assembly. Its members represented themselves, and had no delegated authority to act for the rest of the people. As to the composition and powers of the body there has been much discussion. So far as evidence is available, it tends to show that the Witan usually consisted of the members of the royal family, the royal officials such as the Ealdormen, important Church dignitaries such as the bishops and great abbots, and other persons of influence or importance whom the King asked to be present. There is no evidence that any particular persons had a right to assist in the deliberations of this body. Some men, of course, owing to their position in the country would naturally expect to receive a summons, and it might not be politic for the King to omit calling to his councils men whom it was dangerous to offend or whose cooperation was desired. But presence at the Witan depended on the King's summons.

§ 15. **The Commune Concilium** or Magnum Concilium took the place of the Witan shortly after the Norman Conquest, though exactly how soon is uncertain. It was

[1] The term Witena-gemot ("meeting of the wise men") does not seem to have any official authority.

in principle a feudal court attended by the King's tenants-in-chief, *i.e.* those who held their land directly from the King. It thus differed from the Witan in that "tenure" and not "wisdom" was the qualification for membership. But membership was not entirely confined to the landowners: royal officials, who were not necessarily tenants-in-chief, also attended, and from an early date great ecclesiastical dignitaries, the archbishops, bishops, and abbots, were present, though these last may have attended in their capacity of tenants-in-chief, all of them being great landowners.

In theory it was the duty of all the tenants-in-chief to be present at the meetings of this council, but such a complete attendance would have early become impossible, and the King soon formed the practice of selecting those to whom writs of summons should be addressed. Only on three occasions, viz. at Salisbury in 1086 and 1116 and at the Assize of Clarendon in 1166, does a full meeting appear to have taken place. As Gneist says, "throughout medieval times the summons to attend National Councils was mainly regarded as an irksome duty, which all would have gladly declined."

With the loss of Normandy in John's reign the importance of the Great Council increased, the barons combining against the centralising policy of the Crown, which had rapidly developed under Henry II. Hence arose the movement that led to Magna Charta (1215), by which the Council acquired fresh power and importance.

The method of summoning this assembly is laid down by Clause 14 of Magna Charta, 1215, which has been thus translated:—"In order to take the common counsel of the Nation . . . . the King shall cause to be summoned the archbishops, bishops, earls, and greater barons, by writ directed to each severally, and all other tenants in capite by

a general writ addressed to the sheriff of each shire; . . . . the consent of those present on the appointed day shall bind those who, though summoned, shall not have attended." This may perhaps be regarded as foreshadowing that separation of the assembly into two Houses which subsequently occurred. It clearly shows the inequality of status then existing among those who were summoned.

This clause of Magna Charta cannot be regarded, however, as the origin of popular representation. Although the decision of those who were present was to bind the absentees, the members of the council were not summoned as representatives. This was first done in 1213, when the King directed four discreet men from each county to be sent to confer with him at Oxford. Representatives of the towns were first summoned by Simon de Montfort to the Parliament of 1265. To this Parliament were called two citizens or burgesses from twenty-one cities or boroughs, mentioned individually by name, as well as two knights from each shire. For this reason de Montfort has been called "the founder of the House of Commons." He is, however, scarcely entitled to this designation, as the assembly he convened represented merely his own supporters, and it is doubtful whether he intended this type of Parliament to be permanent Still, subsequent development has been made on the basis he then established.

§ 16. **The Model Parliament.**—In the thirty years following de Montfort's Parliament counties or towns, or both, were on various occasions represented in the National Assembly, but such representation became regular only after "the Model Parliament" of 1295. To this Parliament were summoned by separate writ the archbishops, bishops, and abbots, seven earls and forty-one barons. General writs were also issued to the sheriffs for the election of two knights from each county, two citizens from each city,

and two burgesses from each borough. Besides this, there was attached to the writs sent to the archbishops and bishops what is known as the "praemunientes clause." By this they were directed to cause the attendance in person of the archdeacons and heads of cathedral chapters, and also of proctors to represent the other clergy. It is noteworthy that all these various persons who were summoned did not form one great assembly, although they may have sat in the same hall. The aid or grant of money which the King desired was voted by the barons and knights, the burgesses, and the clergy, separately, and each voted a different proportion of their goods.

§ 17. **The Attendance of the Clergy.**—As has been stated before, the inferior clergy were summoned to the Parliament of 1295 by their representative proctors. Their attendance, however, was not a willing one, as they wished to keep themselves separate, as a privileged class. They had already two assemblies or Convocations of their own, one in the province of Canterbury and the other in that of York. These, like the Parliament, were of gradual development and had become representative by 1283. In them the clergy granted their aids to the King, and, as money was after all the real reason for his desire for the presence of the clergy at the central assembly, it is perhaps not to be wondered at that they soon ceased to attend this. After the end of the fourteenth century they do not appear ever to have attended. Thus the design of Edward I. to make a permanent assembly of the three estates of the realm, the Lords, the Commons, and the clergy, was not fulfilled. It is interesting to note that the clergy are still summoned by the praemunientes clause, although they do not attend.

§ 18. **Convocation.**—A few words may not be out of place here with regard to the history of Convocation after the fourteenth century. The clergy retained the right of

taxing themselves in convocation, but after the reign of Henry VIII. their grants were always confirmed by Parliament. In 1664, however, an arrangement was made between Lord Clarendon and Archbishop Sheldon by which the clergy ceased to tax themselves separately, and acquired in return the right of voting in respect of their glebes for the election of members of the House of Commons. This has been described as "the greatest alteration in the Constitution ever made without an express law." In spite of this arrangement Convocation still continued to meet for other purposes down to 1717. But from that date until 1850 it was always prorogued immediately after meeting. Since 1850 it has frequently discussed church matters. Each convocation consists of two houses, the bishops forming the upper, and the deans, archdeacons, and proctors the lower. Since 1884 these two houses have deliberated separately.

§ 19. **The Separation of the Houses.**—It has already been mentioned that Magna Charta provided for the summoning of the greater barons separately and the lesser barons by writs addressed to the sheriffs. Ultimately the division of the Parliament into two Houses took place on these lines. Those who had a separate summons formed the Upper House, and those who were elected for the counties and the boroughs formed the Lower House. The knights of the shire were by birth and breeding much nearer to the barons than the burgesses, and for some time they sat and granted aids to the King with the former. The burgesses from the first deliberated and voted apart, and it was only gradually that the knights drew away from the barons and joined the burgesses. The chief reasons for this were the common representative character and community of interests of the knights and the burgesses. The separation may be dated from the first years of the reign

of Edward III., and had become definitely established in 1347. Since that time Parliament has kept the form in which we now know it.

§ 20. **The further history of the House of Commons** must be confined to a statement of the changes which were gradually made in the qualifications of its members and those who elected them and in the numbers of which it was composed. By the time that the two Houses separated it had been determined that the Lower House should be composed of representatives of the counties and boroughs. The number of county representatives remained fairly constant, except for the addition of members from the Welsh counties in the reign of Henry VIII., and from those of Scotland and Ireland on the passing of the respective Acts of Union.

The borough representatives tended to increase greatly in number. This was due to the fact that the King issued writs to a gradually increasing number of boroughs, many of which were only small towns and largely under royal domination. In the time of Edward I. the number of borough representatives seems to have averaged seventy-five. This had increased to over two hundred by the close of the reign of Edward IV. During the time of the Tudors the number of the Lower House was nearly doubled, and Elizabeth alone added sixty-two new members. The borough members grew gradually less and less representative, owing to the fact that in many of the boroughs the elective power was confined to a few individuals and that these were open to bribery. It has been stated that, in 1816, 487 members out of a total of 658 were returned upon the nomination of the Government and 267 private patrons.

A rearrangement of the borough representation was made by the Reform Act of 1832. Fifty-six of the rotten

boroughs, as they were called, were disfranchised altogether, while others lost one member only. In their place certain large towns which had previously had no representation were given members. At the same time the number of county members for England and Wales was increased from 95 to 159. Reform Acts dealing with Scotland and Ireland were also passed in the same year. The total membership of the House of Commons was fixed at 658. This number was increased to 670 in 1885 and in 1918 to 707 by the Representation of the People Act. Under this Act a further redistribution of seats was effected, the unit for Great Britain being one seat for every 70,000 inhabitants. By a separate Act the unit for Ireland was fixed at 43,000 inhabitants. England now returns 492 members, Wales 36, Scotland 74, and Ireland 105.

§ 21. **The Franchise before 1918.**—The qualifications required of voters for county and borough representatives differed, and the two franchises must be considered separately. Originally all those who were entitled to attend the county court could vote in the election of knights of a shire. These seem to have included all the landowners whether they held direct from the King or of an intermediate lord. The sheriff presided over the election. In 1430 the right to vote was restricted to those residents who owned freeholds of the value of forty shillings a year. No subsequent change was made in the franchise, *i.e.* the qualification or right of a person to a vote, until the Act of 1832, which restricted the existing qualification in various ways and created a new property qualification. This was finally fixed at £5 by the Representation of the People Act, 1867. The last-mentioned Act also introduced a franchise depending on the occupation of premises rated at £12. In 1884 the county franchise was largely assimilated to that of the boroughs.

Before 1832 there was no general rule as to the right to vote for a borough representative. The qualifications varied in different boroughs. They may be summarised under four heads—(1) the holding of land, (2) residence combined with payment of scot and lot, or, as we should say, rates and taxes, (3) the freedom of the borough, (4) corporate office. With two exceptions these qualifications were abolished by the Reform Act of 1832. The exceptions were the forty-shilling freehold qualification in towns that were counties and that arising from the freedom of a chartered town. From 1832 to 1867 the borough franchise depended on the occupation of premises of the clear yearly value of £10, subject to certain conditions as to residence and payment of rates. The household and lodger franchises in force till 1918 were introduced by the Representation of the People Act 1867.

In 1885 an attempt was made to divide up the country into constituencies which should be roughly of the same size. This had become possible owing to the assimilation of the borough and county franchises. Previously the taking away of a member from a borough had entailed the disfranchisement of the majority of the borough electors, but this result no longer followed. Hence a large number of towns which had returned members were thrown into county divisions, while the larger towns were split up into districts and given a representation more in accordance with their size. The counties, too, were divided into a much larger number of districts than formerly.

The Franchise from 1884 to 1918 depended on the possession of one of the following qualifications :—

(1) Forty-shilling freeholds, if of inheritance, or in occupation, or acquired by marriage, marriage-settlement, will, benefice or office.

(2) Other property of £5 yearly value, except that the

value of leaseholds had to be £50 if the original term was less than sixty years, and no term less than twenty years gave a vote.

The above only applied to counties and in certain counties of cities such as Bristol, Exeter and Norwich.

(3) Twelve months' occupation of land or a house of the clear yearly value of £10.

(4) Twelve months' occupation of a dwelling-house for which the rates had been paid, combined with residence. This included occupation by virtue of any office, service, or employment, which was known as the "service franchise."

(5) Twelve months' occupation of lodgings of the clear yearly value of £10 unfurnished.

(6) Freedom of a borough if this gave a right to vote before 1832. The freedom must be acquired by birth or servitude, *i.e.* apprenticeship, and there were certain qualifications as to residence. In the City of London the freeman had to be a liveryman of one of the City Companies.

(7) A degree of certain Universities subject to various conditions.

The Scotch and Irish qualifications were generally similar to those set out above which relate to England.

Women, infants, peers, aliens, idiots, and lunatics might not vote, even if in other respects they possessed the necessary qualifications. Persons employed for the purpose of an election could not vote in that election. Parochial relief was a bar to the right to vote: but this did not apply to medical relief. Another bar was conviction for treason, felony or corrupt practices. In the last case the disqualification extended for seven years, and in the other two until the sentence had been served or a pardon granted. Provisions were also in force to prevent the creation of property votes merely for election purposes.

§ 22. **The Franchise at the present time.**—Continuous and widespread demands for the further extension of the franchise—especially to women—and for electoral reforms, led in 1918 to drastic changes in these matters. An Act, the main principles of which had been settled in advance by a large committee consisting of representatives of all political parties and presided over by the Speaker, was without much difficulty passed through Parliament in that year. Its easy passage may be attributed to the lull in party strife brought about by the war and the formation of a Coalition Government. The main changes are as follows:—

(1) Instead of the seven alternative qualifications there are now three, namely, in respect of (*a*) residence, (*b*) occupation of business premises, (*c*) possession of a university degree or its equivalent.

(*a*) and (*b*).—Male electors must be of full age and have resided, or occupied business premises of an annual value of not less than £10, in the same parliamentary borough or county, or one contiguous thereto, for six months ending on January 15 or July 15 in any year. A woman voter must be thirty years of age, and entitled to be registered as a local government elector in respect of the occupation of premises of a yearly value of not less than five pounds, or of a dwelling house; or she must be the wife of a husband entitled to be so registered. Lodgers in unfurnished, but not furnished, rooms can vote, if otherwise qualified.

(*c*) The University franchise is extended to men of twenty-one years and women of thirty years of age, who have taken a degree, or, in the case of women, its equivalent. In Scotland and Ireland other scholastic attainments are admitted as qualifications.

(2) No person may vote at a general election for more than two constituencies, for one of which, in the case of a

man, there must be a residence qualification, and, in the case of a woman, a local government qualification (her own or her husband's). The second vote must rest on a different qualification.

(3) Receipt of poor relief or other alms no longer counts as a disqualification. The old disqualifications through legal incapacity remain. But the incapacity of peers does not extend to peeresses in their own right.

(4) Two registers of electors are to be prepared each year, one in the spring, and the other in the autumn. In Ireland only one register is required. University registers may be made up as the governing bodies appoint.

(5) In university constituencies returning two or more members the elections must be conducted on the principle of proportional representation, each elector having one transferable vote.

(6) At a general election all polls are to be held on the same day, except in the cases of Orkney and Shetland, and university elections. Provision is made for absent electors to vote, in certain cases by proxy.

Previous to the passing of this act the number of persons (all males) qualified for registration as parliamentary electors was about 8,350,000. The number now qualified is about 16,000,000, of whom 6,000,000 are women.

§ 23. **Who may be an M.P.**—There is now no property or religious qualification for membership of the House of Commons. By an Act of Henry V. residence in the constituency was required, but this requirement became obsolete, and was abolished in 1774. In 1710 a property qualification was imposed, but it was constantly evaded, and was finally repealed in 1858.

One of the chief bars to membership was found in the oath which members had to take before they could sit in the House. The form in which this was framed prevented per-

sons with certain religious beliefs from taking it. Various changes were made, and as a consequence it became possible for Roman Catholics in 1829, Quakers, Moravians, and Separatists in 1834, and Jews in 1858 to become members. In 1888 an affirmation was made sufficient for those who dislike to take an oath. This prevents the recurrence of such disputes as those which arose with regard to Mr. Bradlaugh, an atheist, between 1880 and 1886.

Women are now eligible for membership under the Parliament (Qualification of Women) Act 1918.

The following persons are, however, disqualified from becoming members:—

(1) Minors, aliens, idiots, and lunatics.

(2) Peers, except that an Irish non-representative peer may sit for a British constituency. The wife of a peer does not share her husband's disqualification.

(3) Clergy of the Church of England, the Church of Scotland, and the Roman Catholic Church. Ministers of the Church of England may free themselves from this disqualification, and re-enter secular life under an Act of 1870. Nonconformist ministers may become members.

(4) Government contractors.

(5) Persons convicted of treason or felony, unless they have served their sentence or been pardoned. Bankrupts. Persons found guilty of corrupt practices may not be elected for seven years for any constituency, and never for that where the offence was committed; but if the offence is the unauthorised act of an agent, the only penalty is an incapacity for being elected for the constituency in question during the next seven years.

(6) Pensioners of the Crown; but exceptions are made for holders of civil service and diplomatic pensions.

(7) Certain office holders. Judges: Government clerks and officials: returning officers for their own constituencies:

all persons holding offices of profit under the Crown created since October 25th, 1705 (with certain exceptions). Further, any member who accepts an office of profit under the Crown created before that date other than a commission in the army or navy thereby vacates his seat, although he may be re-elected. It is in accordance with this rule that the head of a Government office, such as the Home Secretary, requires re-election after appointment. This provision is also used to enable members to retire if they wish. A seat cannot be resigned, but the member accepts some nominal office such as the stewardship of the Chiltern Hundreds. By this means the seat is vacated and a day or two later the office is resigned.

(8) It may be noted that from 1372 to 1871 no lawyer could legally sit for a county constituency.

Besides the disqualifications set out above, a member may vacate his seat for various reasons:—

(1) By the acceptance of office, as noticed above.

(2) By succeeding to a peerage or being made a peer; but this does not apply to non-representative Irish peers, provided they sit for a constituency in Great Britain.

(3) By death.

(4) By lunacy continuing for six months.

(5) By bankruptcy, unless it is annulled or a discharge granted within six months, with a certificate that it was not caused by misconduct.

(6) By becoming naturalised in a foreign country.

(7) The House has an inherent right to expel a member for conduct rendering him unfit to take part in its deliberations. This vacates the seat, but does not prevent re-election of the member. Thus John Wilkes, who was expelled for seditious libel, was three times re-elected, and the action of the House in finally giving his seat to his opponent was subsequently declared unconstitutional.

§ 24. **The Duration of Parliament.**—One of the Ordinances of the Lords Ordainers in 1311 directed that Parliament should meet annually, and this was reaffirmed by legislation in 1330 and 1362. The rule was observed during the reign of Edward III., and sometimes two, three, or even four Parliaments met in one year. In the fifteenth century there were long intermissions, and in the reign of Henry VII., which extended over a period of twenty-four years, seven Parliaments only were summoned of which only one occurred in the last thirteen years. Again, there was only one Parliament between 1515 and 1528, but in the reign of Elizabeth a summons was issued on the average once in three and a half years.

James I. summoned only one Parliament between 1610 and 1621, and none was called from 1629 to 1640. Subsequently the Triennial Act, 1641, was passed, which provided that Parliament should be summoned every third year. In 1664 this was repealed, but it was provided that three years should not go by without a Parliament, while the Bill of Rights, 1689, contained the statement that "Parliament ought to be held frequently." Since the Revolution Parliament has met practically every year, but this rule is merely a "Convention of the Constitution," as there is no statutory provision to that effect. If Parliament were not to meet for a year, those taxes which are granted annually would cease and the Government would find it difficult to carry on its work. But a greater difficulty still would arise. Power to control the members of the army is given by the annual Army Act, and if this were not passed it would be impossible to maintain the army. Hence the Crown is in practice forced to summon Parliament to vote supplies and to pass the annual Army Act.

The duration of Parliament was first affected by the Triennial Act of 1694, which provided that no Parliament

should continue longer than three years, a period which was extended to seven years in 1716 by the Septennial Act. The Parliament Act of 1911 limited the duration of Parliament to five years, but Parliament may, as in 1915, extend its own existence by an Act passed through both Houses and assented to by the Sovereign.

Formerly the death of the Sovereign at once dissolved Parliament, but by an Act of 1696 Parliament was to continue for six months unless previously dissolved. Since 1867 the death of the monarch does not affect the duration of Parliament.

Originally a fresh Parliament was summoned each year, but later more than one session was sometimes held. The ten Parliaments of Elizabeth's reign held thirteen sessions and the four of James I. eight sessions. The Long Parliament (1640-1660) and the Pensionary Parliament (1661-1679) are well-known examples of long-lived Parliaments.

§ 25. **How Parliament is summoned.**—A Proclamation is issued that the King desires to have the advice of his people in Parliament. Then an Order in Council is made directing the Chancellors of Great Britain and Ireland to issue the necessary writs. The peers are summoned by separate writs. The writs for members of the House of Commons are directed to the various returning officers, who conduct the necessary elections and subsequently make a return stating who has been elected.

§ 26. **The Conduct of an Election.**—The returning officer gives public notice of the receipt of the writ and appoints a day for receiving nominations, which must be in a particular form and accompanied by a deposit to cover the expenses of the election. If only one candidate is nominated he is declared to be elected, but if two or more are nominated a poll is necessary. A day is

named, and the election is made by ballot, so that no one may know how any elector has voted. The votes are then counted, and the candidate with the greatest number is declared elected. In the case of a tie the returning officer has a casting vote. Very stringent rules are laid down to prevent anything in the shape of bribery or corruption. The candidates are allowed to spend only a fixed amount of money in advocating their claims, *i.e.* 7d. for each voter in a county constituency and 5d. in a borough. They can also employ only a certain number of people for payment in the work of the election. An election agent who manages the details of the election is usually employed on each side. After the election a strict account has to be rendered of all expenses incurred during the election.

The House of Commons itself formerly decided all disputes as to elections, but in 1868 this function was transferred to two judges of the High Court of Justice.

§ 27. **The Meeting of Parliament.**—Parliament meets on the day appointed, and the first duty of the Commons is to appoint a Speaker. He acts as chairman of the House and also as its representative in communicating with the Crown. After his appointment has been approved, the newly elected members take the oath of allegiance. The Speech from the Throne, which is a statement of the objects of summons, is then read in the House of Lords, where the Commons are summoned to hear it. After some formal business has been transacted in the House of Commons to show its independence of the Crown, the Speech is then re-read there by the Speaker, and the real business of the session begins.

§ 28. **Adjournment, Prorogation, and Dissolution.**—While Parliament is sitting it is necessary for it to be adjourned from day to day and sometimes for longer

periods. Each House has the sole control over its own adjournment, which is effected by a motion agreed to by the House. If both Houses are adjourned for more than fourteen days the Sovereign can issue a Proclamation calling on them to re-assemble after six days.

A Parliament does not sit continuously throughout the whole of its existence, but for certain periods known as sessions. As a general rule there is only one session in each year, commencing about the end of January or beginning of February and ending in August. Occasionally another session is held in the autumn. During the War, however, autumn sessions became the rule. The dates of the beginning and ending of a session are determined by the Sovereign acting on the advice of the Prime Minister. When the Prime Minister thinks that the Parliament has sat long enough and that the session should end he advises the Sovereign accordingly, and the latter in person or by special representatives prorogues it until a certain date. It will assemble again on this date, unless it is further prorogued in the meantime.

It has already been seen that the maximum duration of a Parliament is now fixed at five years, but the Sovereign may, on the advice of his Ministers, dissolve it at any time before the expiration of that period. When a dissolution is contemplated, the present practice is for the King first to prorogue Parliament, and then to issue a Proclamation dissolving it. The same Proclamation provides for the summons of the next Parliament on a day named; and, as we have seen, it is accompanied by an Order in Council commanding the issue of the writs necessary for that purpose.

CHAPTER IV.

THE FORM OF THE HOUSE OF LORDS.

§ 29. **General History.**—The origin of the House of Lords can be traced to the Commune Concilium. Magna Charta, as we have seen, sanctioned the organisation of this body on a feudal basis for purposes of taxation. It acquired additional power during the long minority of Henry III., when the whole supervision of the administration came into its hands. The magnates of the realm had thus a corporate existence in a recognised assembly with definite duties before the date when Edward I. bade them share the most important of their powers with the representatives of the Commons. The essential distinction to make between the Commune Concilium and the House of Lords is the growth and ultimate triumph of the hereditary principle.

The various ranks of the peerage were gradually created. The first duke was the Black Prince, who was created Duke of Cornwall in 1337. The title of Marquis dates from 1385 and that of Viscount from 1440. Sixteen representative peers of Scotland were added in 1707, and twenty-eight of Ireland in 1801. The Appellate Jurisdiction Act of 1876 further increased the House by the addition of four Lords of Appeal in Ordinary.

The numbers of the House have varied from time to time, but originally the spiritual peers were in a majority. The Wars of the Roses thinned the ranks of the lay peers. Fifty-three were summoned in 1454, but only 29 in 1485. At the death of Elizabeth their number was 59, and this had increased to 168 by the death of Anne. No fewer

than 388 peerages were created during the reign of George III., but some of these and of the older ones became extinct, and the number of lay peers at his death was 342. The reign of Queen Victoria saw the creation of 373 lay peers, and at her death the membership of the House of Lords had reached a total of 591.

§ 30. **At the present day** (May 1920) the House of Lords is composed of 3 Peers of the Blood Royal; 2 Archbishops and 24 Bishops; 613 Peers of the United Kingdom, consisting of 18 Dukes, 29 Marquesses, 124 Earls, 64 Viscounts, and 378 Barons; 16 Scotch representative peers; 28 Irish representative peers, and 6 Lords of Appeal in Ordinary,—making a total of 692.

§ 31. **The Spiritual Peers** were formerly the most influential and powerful in the assembly and outnumbered their lay colleagues. The dissolution of the monasteries in the reign of Henry VIII. greatly diminished their number, which was finally fixed at twenty-six. In 1801 one archbishop and three bishops of the Irish Church were added, but on the disestablishment of that Church in 1869 they lost their right to be summoned. Although fresh bishoprics have been created the number of seats to which the spiritual peers are entitled has not increased.

The twenty-six seats are thus allotted. The archbishops of Canterbury and York and the bishops of London, Durham, and Winchester are always entitled to a summons. The remaining twenty-one seats are filled by the twenty-one bishops who have longest held an English see. The Bishop of Sodor and Man has no right to speak or vote, but there is some ground for the opinion that he has a right to a seat. On resignation of his see a bishop loses his right to a seat in the House of Lords. In 1642 an Act was passed taking away the right of the bishops to sit in the House of Lords, but this was repealed in 1660.

§ 32. The Peerage of the United Kingdom.—The meaning of the term "baron" has gradually changed. Originally a baron was a tenant of land who held direct from the King, and as such he was usually summoned to the Magnum Concilium. Before the time of Magna Charta the use of the term had been restricted to those who held at least a certain number of knights' fees. This holding of itself did not entitle a person to be summoned, although perhaps at first no one was summoned who did not possess such a holding. It was the King who determined who should or should not be summoned, and by the time of Edward I. it had become customary to summon persons who held nothing of the Crown. The writ by which this summons was made ultimately became the sole condition for attendance.

At first it did not follow that because a man had been summoned his heir would be summoned after him, but as the baronies descended from one person to another under the feudal system the analogy was applied to a writ of summons, and the perpetual or hereditary summons became the rule. The exact date when a single summons implied a perpetual one is not definitely known, but it is certainly not later than the end of the fourteenth century—indeed Dr. Stubbs would fix it at 1295. Thus from having been a mere landholder a baron at length came to mean a person who had received a writ of summons from the King, and had thereupon taken his seat in the Upper House. There was no longer any necessity for his having any further qualification, and when he had once been summoned and had taken his seat his heirs were entitled to a writ after his death. It was sometimes difficult to know, however, who the heir of a baron really was, as there were no title deeds or documents stating how the dignity was to descend. It was different with the other ranks of the peerage. An earl was given a charter, which declared that he had been

made an earl and stated who was to succeed him. Letters patent were subsequently used instead of a charter.

The certainty which this method of creation gave was so great that it was applied to the creation of baronies. The first instance occurs in 1387, and after the reign of Henry VI. it became the usual method. But in the case of any barony which was not so created proof must be given that a writ of summons was issued, that the summons was obeyed, and that the person summoned took his seat. On this being done an hereditary peerage is constituted. A person cannot now claim a writ of summons on account merely of his holding certain lands. A peer cannot sell his barony to another, nor can he surrender it to the Crown.

At the present day a new peer of the United Kingdom is always created by letters patent. A writ of summons is sent to the new peer, and on his first attendance at the House of Lords this, with the patent, is entered upon the Journals of the House. The House of Lords itself determines any doubtful claims as to peerages.

§ 33. **Scotch Peers.**—The Act of Union with Scotland provided that sixteen Scotch peers should sit in the House of Lords as representatives of the Scotch peerage. These sixteen are elected by the Scotch peers at Holyrood before the commencement of each Parliament. Their right to sit and vote only continues for the duration of the Parliament. They do not receive a special summons, but a list of those elected is sent to the Clerk of the House. Only those Scotch peers who are not peers of the United Kingdom can be elected. The Crown is debarred from creating any more Scotch peers, and as a number of Scotch peerages have become extinct or their holders have been created peers of the United Kingdom, the number of Scotch peers who have no seat in the House of Lords tends gradually to

decrease. In 1707 the peerage of Scotland was nearly as large as that of England, but in December 1909 there were only twenty Scotch peers who had no seat in the House of Lords.

§ 34. **Irish Peers.**—Twenty-eight Irish representative peers were added to the House of Lords by the Act of Union of 1801. They are elected for life and not merely for the duration of a Parliament like the Scotch peers. All the peers of Ireland are entitled to vote for their election. It was provided by the Act of Union that only one Irish peerage should be created for every three that became extinct until the number was reduced to one hundred, and that the peerage should be subsequently kept at this figure by the creation of a new Irish peerage for every one that became extinct or whose holder acquired a seat in the House of Lords as a peer of the United Kingdom. In 1801 the Irish peerage numbered 234, but in December 1909 the number of Irish peers who had no seat in the House of Lords had been reduced to sixty-five. These peers, as has been previously stated, might be elected to the House of Commons for any constituency in Great Britain, but not for an Irish constituency.

§ 35. **The Law Lords.**—By the Appellate Jurisdiction Acts of 1876 and 1913 six Lords of Appeal in Ordinary have been added to the Lords. The persons chosen must have certain legal qualifications; they are appointed by letters patent and they have the rank of a baron for life. Like all other judges they hold office during good behaviour and may be removed on an address by both Houses of Parliament. Since 1887 they retain their right to a seat in the House after resignation of their office.

The Lords of Appeal in Ordinary and the bishops are the only members of the House of Lords who do not hold hereditary peerages. In 1856 a patent was issued to Sir

James Parke, creating him Baron Wensleydale "for and during the term of his natural life," and giving him the right to a writ of summons. The House of Lords objected to the summons of a life peer, and ultimately a fresh patent was issued making the barony in question hereditary as in ordinary cases. This case decided therefore that the King cannot create a life peerage which carries with it the right to a seat in the House of Lords. The object aimed at by this creation has, however, been achieved by the Appellate Jurisdiction Act.

§ 36. **Disqualifications.**—Women, infants and aliens cannot sit in the House of Lords. Bankruptcy and conviction for treason or felony have the same effect as in the case of the House of Commons. A peer can also be disqualified from ever sitting again by sentence of the House when sitting as a court of justice. No peer may take his seat until he has taken the parliamentary oath, which is the same as in the House of Commons, or made the alternative declaration. As has been already mentioned, only certain members of the Episcopate and certain Scotch and Irish peers are entitled to a seat, and life peerages (other than those of the Lords of Appeal in Ordinary) do not carry with them the right to a summons.

CHAPTER V.

THE LEGISLATIVE POWER.

§ 37. **Legislation and Taxation.**—Legislation is the process by which laws are made. A law is a rule or set of rules declared by the sovereign power in the State which all persons belonging to that State or within its borders are commanded to observe. Taxation is a particular form of legislation. It consists in a command to pay certain monies wherewith the business of the State may be carried on. At the present time nobody can be forced to pay any taxes unless it can be shown that such taxes are imposed on him by Act of Parliament. An Act imposing taxes has to be passed by the two Houses and must receive the assent of the King just like any other Act. In any yearly volume of statutes, Acts imposing taxation and Acts relating to other subjects, such as parish councils or merchant seamen, are found without any distinction being made between them. But this was not always so. Parliament first acquired control over taxation and then used this control as a lever to acquire control over legislation. This chapter will be devoted to tracing the methods by which this control was obtained and, when obtained, guarded against any competing claim.

§ 38. **Early Forms of Legislation.**—In Anglo-Saxon times all laws were made by the King with the counsel and consent of the Witena-gemot, and the latter body was

always consulted with regard to any extraordinary taxation. After the Norman Conquest the respective powers of the King and his Council remained outwardly the same as before, but owing to the introduction of the feudal tenure of land and the consequent right of the King to demand feudal dues from his tenants the power over taxation largely passed into his hands. The council which succeeded the older Witena-gemot was, however, consulted about taxes other than these feudal dues; but the first successful opposition to taxation appears to have occurred in 1198, when a demand which had been made by the King was withdrawn and the Justiciar, who was the King's representative, resigned. The first recorded opposition to the King in respect of taxation was by Becket in 1163.

Before 1188 all direct taxes had been levied on the land, but the Saladin tithe of that year was imposed on movables. The amount was determined in the various parishes by the oaths of representative inhabitants. This method was also applied to determine the amount of taxation on land. The introduction of this principle of representation in assessing taxes laid the foundation of the system of taxation at the present day by which all taxes are voted by the representatives of the people. The people were thus being gradually educated up to the idea that they, not the King, were the proper persons to determine the amount of their taxation.

With regard to legislation, there was but little in the period from the Norman Conquest to Magna Charta. What there was took the form of declarations of existing law which ought to be observed rather than of amendments to that law. These declarations at first were issued as charters by the various kings with the assent of the barons. An example of this is the Charter of Liberties issued by Henry I. in 1100, which was the sole legislative

act of his reign. A somewhat later form of legislation is the "Assize." Assizes were used to proclaim amendments in judicial procedure and were of a more or less temporary character. They were drawn up by the King with the advice and consent of his national council. Instances of this form of legislation are to be found in the Assize of Clarendon, 1166, and the Assize of Northampton, 1176.

§ 39. **Magna Charta** has been described as one of the three most important documents in our constitutional history, the others being the Petition of Right and the Bill of Rights. We have already seen that it laid down the method of summoning the national council. But besides this, it declared that without the consent of that council no scutage or aid should be levied except the three usual aids to which the King was entitled as feudal lord. The importance of this clause lies in the fact that it was a deliberate declaration by the King that he had no right to tax the people arbitrarily. The declaration certainly did not include the towns, other than London, but these had yet to establish their footing in the national assembly. In theory the council had always had the right to a voice in taxation, and as a matter of fact it had frequently been consulted by the various monarchs when they needed money. But these clauses of Magna Charta for the first time lay down definitely that taxation requires the consent of those who are to be taxed. The Great Charter contains nothing directly relating to the right or method of legislation, but, by defining the nature of the national assembly, which hitherto had always had some part in legislation, and by placing in the hands of that assembly the control over taxation, it exerted great influence on the ultimate history of legislation.

§ 40. **From Magna Charta to 1295.**—This period saw the gradual development of the national council into the

Model Parliament, containing practically the same elements as the Parliament of the present day. The rights which the assembly had were also confirmed and increased. The minority of Henry III. gave it considerable opportunity of asserting its position. Taxes asked for by the King were frequently refused, and, when granted, the methods of collection and assessment were definitely laid down. Before 1295 it was customary for the King's advisers to negotiate separately with the various classes of the community as to what grant of taxation they would make. There seems to have been a growing tendency to doubt the right of one part of the community to bind another part in matters of taxation. But in 1295 these special negotiations ceased and the representatives of the whole nation came together into a national Parliament. Still, however, the various estates made their votes of taxation separately and for separate amounts.

The national assembly had acquired as yet but little control over legislation. The practice of petitioning the King to remedy grievances had begun, and one petition led to the Provisions of Oxford, 1258. The idea of making the grant of taxation rest upon the redress of grievances had also arisen, but had not by any means reached its full development. Although legislation was now made by the King with the assent of the national assembly, it is clear that the assent of the Commons was not strictly necessary. The statute of *Quia Emptores* in 1290, which made great changes in the law of land, was passed by the national assembly before the Commons arrived, and other instances of legislation by the King with the assent alone of the greater barons could be mentioned.

§ 41. **Taxation from 1295 to 1485.**—It was a maxim of the State that "the King should live of his own." But the income which he derived from feudal sources proved insufficient

for his needs, and he was forced to apply to Parliament to make up the deficiency in revenue. It is to this fact that Parliament owes its present powers and position.

In 1297 the Confirmatio Cartarum was extorted from Edward I. This confirmed Magna Charta and provided that taxation should be made only with the common consent and for the common benefit. It did not actually state that talliages, which were taxes on the towns, were included in the taxes not to be levied without common consent, and accordingly Edward I. imposed one in 1304. Subsequent talliages were resisted, and the right was expressly abolished in 1340. Another exception from the Charter of 1297 was the right to exact customs on wool and other articles. New customs were introduced and aroused great opposition. The customs were, however, eventually regulated and became part of the ordinary revenue. From the latter half of the fourteenth century the power of Parliament over indirect taxation has been recognised. Its control over direct taxation had already been obtained, and it may therefore be stated that the exclusive right of Parliament to impose taxation had become one of the rules of the Constitution.

§ 42. **Statutes and Ordinances.**—The control of Parliament over legislation was not acquired so soon or so easily as the control over taxation, but the latter eventually led to the former. In 1309 a subsidy was voted on condition that the King granted redress on certain points laid down in eleven articles. In 1322 an Act was passed which shows a considerable advance on the declaration of Edward I. that that which touches all must be approved by all. This statute declared that all the concerns of the realm "shall be treated, accorded, and established in parliaments by our lord the king and by the consent of the prelates, earls, and barons, and the commonalty of the realm."

But even this could not be said to be anything more than a declaration. It had yet to be converted into a fact. Side by side with the "Statute" enacted by the King, at the request of the Commons and with the assent of the Lords, was the "Ordinance" issued by the King on the advice of his council. The main distinction between the two forms of legislation was that the statute was a permanent legislative act, while the ordinance was really an executive act of a temporary character. The functions of the two overlapped, and as Parliament's control over the form and contents of statutes grew stronger, the King endeavoured to counteract this by legislating by way of ordinances, which were free from the control of Parliament. Thus the Ordinance of the Staple was issued in 1353 and the Commons immediately protested, while in 1390 they petitioned that no ordinance might be made contrary to the law of the land. During the fifteenth century legislation by ordinance disappeared, but the right of the King to legislate independently of Parliament, by virtue of his prerogative or royal power alone, was maintained and became a fruitful source of strife in the time of the Stuarts.

§ 43. **The Initiation of Legislation.**—The ordinance was not the only difficulty against which the Commons had to fight in obtaining control over legislation. At first all legislation in Parliament was initiated by the King. Gradually the Commons formed the practice of petitioning for the redress of grievances and making their grant of supplies depend upon a favourable answer. Even then, however, they were not sure of securing the desired end. They had at first no hand in drawing up the statutes which were founded on their petitions. Accordingly it sometimes happened that a statute did not contain all that they had asked for, or that, if it did, it was so qualified with conditions

as to make the proposed legislation useless. It also might happen that there was so much delay in drawing up the statute that the matter was put on one side and the petition forgotten. This last grievance was remedied by putting off the grant of supplies until the last day of the session, thus compelling the King to issue his statutes before he could get the money he required. This device was first used in 1339. A way to compel correspondence between the petition and the statute based on it was found in the reign of Henry VI. The petition was framed in the form of a statute, and a request was added that its form should not be altered. When this had become the recognised usage the power of the Crown over legislation proposed by Parliament was confined to the right of veto. The Crown and the Parliament had changed places, the executive and the legislature were clearly distinguished, and the foundation of the sovereignty of Parliament had been laid. The gradually increasing influence of the Commons is also shown by the change in the enacting part of the statute. At first the phrase used is "at the request of the Commons"; but this gives place in the reign of Henry VI. to "by the authority of Parliament," and after that reign the former phrase is never used.

§ 44. **Proclamations.**—The ordinance, as has been already pointed out, was a declaration issued by the King in Council of a more or less temporary character and having special reference to executive or administrative needs. This had gone out of use in the fifteenth century, but was revived as the "Proclamation" under the Tudors and Stuarts. The ordinance had been due to the confusion between the executive and the legislature and to the hitherto ill-defined powers of the latter, but the proclamation was a direct claim by the Crown to a legislative authority independent of Parliament. During the Tudor reigns the nation as a

whole recognised the danger of the time and the necessity for a strong central executive authority. And so the Parliament, while anything but servile, was the willing agent of the monarchy, and by that very willingness was able to acquire powers and create precedents whose full force and importance were only seen in later years.

In 1539 an Act gave the force of law to the proclamations of the King issued with the consent of his council. This practically resigned the legislative powers of the Parliament into the hands of the King, but at the same time it was a recognition of the fact that the eventual law-making power was in the Parliament and not in the King. This Act was repealed in the reign of Edward VI., but proclamations still continued to be issued, and in the time of Elizabeth were specially directed towards creating a censorship of the press. In the reign of Mary the judges had laid down that no new law could be made by proclamation, but it was not until 1610 that the position was clearly defined. The judges were then asked for their opinion, and laid down that the King could create no new offence and that his prerogative was only what the law allowed him; but that the King might by proclamation warn his subjects against offences and that the neglect of such warning would aggravate the offence. Further, that no new jurisdiction could be given to the Court of Star Chamber.

It was in this latter court that offences against proclamations were punished, and on its abolition in 1641 the illegal use of proclamations as a means of legislating without parliamentary sanction ceased. At the present day all proclamations derive their ultimate authority from Parliament, and if any emergency arose in which for the good of the State it was necessary to issue some proclamation, the Ministers authorising that issue would have

to obtain the subsequent passing of an Act of Indemnity to save them from the consequences of their illegal action. It should be noted, however, that the Crown can still validly issue proclamations, without the consent of Parliament, for the performance of acts which are purely executive, such as the making of war or peace

§ 45. **The Dispensing Power** consisted in the right of the Crown to exempt individuals from the operation of particular laws. It is undoubted that some power of this kind did reside in the King, but the uncertainty as to its extent led to constant struggles to restrict it within reasonable bounds and ultimately to its abolition. At first this power was necessary to remedy the errors in ill-drawn laws and the lack of regular meetings of the legislative assembly, but it was greatly abused in the fourteenth century, and petitions of 1347 and 1351 presented by the Commons show that large numbers of wrong-doers had been pardoned by its exercise. Various attempts at curbing it were made, but without much success, and during the reigns of the Tudors and the Stuarts it flourished strongly. In 1686 James II. obtained a verdict from a packed court that his exercise of the dispensing power was legal, and, armed with this declaration, he used the power unsparingly. It was largely the misuse of this power and the similar power of suspending laws that led to the Revolution of 1688 and the passing of the Bill of Rights. This enacted that "the pretended power of dispensing with laws or the execution of laws by regal authority as it hath been assumed and exercised of late is illegal." The King cannot, therefore, dispense with any law unless he is given power to do so by the law itself. But the right of the King to pardon offences is not taken away. This is now exercised on the advice of the Home Secretary.

§ 46. **The Suspending Power** was of much wider extent than the dispensing power. It was a claim to suspend the operation of a statute or number of statutes not merely in individual cases, but for the whole realm. In 1391 Parliament gave Richard II. this authority with regard to the Statute of Provisors, but declared that their so doing was not to act as a precedent. Similar authority was given in certain cases to Henry IV., but it was found impossible to confine the exercise of the power within proper limits. In the Stuart reigns it formed a grave cause of struggle between the King and Parliament. The Declaration of Indulgence of 1672 and the similar Declarations of 1687 and 1688 are the most conspicuous instances of its abuse. The last-mentioned Declaration led to the protest of the Seven Bishops, which was followed by their trial for seditious libel. Their acquittal was the signal for the invitation to William of Orange and the prelude to the Revolution. The Bill of Rights enacts "that the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal." No other solution of the struggle was possible if Parliament was to establish its legislative omnipotence.

§ 47. **Illegal Taxation.**—We have already seen that by the end of the fourteenth century Parliament had acquired control over taxation. In the same way that the King endeavoured by means of proclamations to thwart the legislative powers of Parliament, so by means of "Impositions," which were customs duties imposed by the King with the authority of his council, he attempted to free himself from the parliamentary control over taxation. Several instances of impositions occurred during the Tudors, and in Bates' Case (1606) James I. obtained a verdict for the validity of the practice. Four years later, however, the Commons awoke to the constitutional importance of the

matter, and protested against the exaction of these customs. They were finally prohibited by the Long Parliament in 1640.

Charles I. endeavoured also to exact direct taxation under the title of ship money, with which episode the name of Hampden must always be associated. The tax was clearly illegal, although the influence of the King sufficed to obtain a verdict by seven judges against five in favour of its legality. In 1641 the Long Parliament declared ship money illegal and abolished it. Another illegal kind of exaction was made by means of benevolences. These were a sort of forced loan; but all forced loans and benevolences were declared illegal by the Petition of Right. In 1660 the feudal dues were also abolished, and the Crown received in exchange a fixed annual sum. Finally the Bill of Rights declared "that levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal." Since then the control of Parliament over the methods of raising the national revenue has been unquestioned.

§ 48. **Indirect Influence and Corruption** were also used by the Crown in its endeavour to control the current of legislation. By 1485 Parliament had theoretically acquired control over both taxation and legislation, but it was not until after the Reform Act of 1832 that it was completely emancipated from the controlling influence of the Crown. The right of summons was in the Crown, and its ministers would know exactly what laws the Sovereign desired to be passed, while the ordinary members, without any party organisation or much knowledge of state affairs, would have little coherence and could make but weak resistance to the royal wishes as put before them by the King's Ministers.

This was the position under the Tudors. These sovereigns also created many new constituencies, having few electors and being, therefore, particularly open to the royal influence. Such influence was also exercised by circulars addressed to the returning officers recommending various individuals or classes of persons for election. The Stuarts substituted for these methods interference with the various parliamentary privileges, and, in the time of Charles II., direct bribery. After the Revolution and down to 1832 corruption was rife. The boroughs were mostly in the hands of a few people, and were bought and sold like so much property. Among the members themselves bribery was carried on in various ways. Some were given offices of profit, others pensions. Government contracts were found for some, while the bestowal of honours and dignities was sufficient to win the votes of others. Systematic payments were also made direct to members, and it was cynically said that every man had his price.

It was by methods such as these that the King and his Ministers obtained a working majority during the eighteenth century. Towards the end of the century, however, it was shown that a party could be formed and exist without the prospect of mutual gain, and although the influence of the French Revolution retarded to some extent the reform movement in England, yet in 1832 the Reform Bill was passed which made it possible for Parliament to shake itself free from the indirect control of the Crown. Since that time the spread of the franchise and the passing of the Ballot Act have aided the growth of parliamentary independence, while the severity of legislation against bribery and corruption and the curtailment of election expenses within certain defined limits are witnesses to the formation of a body of public opinion inimical to all interference with the choice of the electors. And yet the

Crown still has great influence. But it is the influence of advice and wise counsel rather than of underhand interference for the sake of self-interest. No one can read the memoirs of distinguished statesmen of the last century without feeling how great has been the influence of the Sovereign in the guidance of national affairs. The important part played by the Sovereign is also shown very plainly in the recently published "Letters of Queen Victoria." But the Crown's influence is now always exercised through advice given to Ministers with the single aim of advancing the public weal.

§ 49. **The Right of Veto.**—Apart from the indirect influence which has been dealt with in the preceding paragraph, the last stronghold of the Sovereign in resisting the legislative control of Parliament is to be found in the right of veto. This is the right of the Sovereign to refuse assent to any bill which is passed by Parliament. This right was frankly asserted and vigorously used under Elizabeth, but the Stuarts preferred other methods of thwarting the people's will. William III. exercised his veto on several occasions, but the solitary example (in 1707) afforded by the next reign is the last. The right has never actually been given up and the assent of the King is still necessary to legislation; but there are other methods of making his influence felt, and after the lapse of two centuries it is not likely that the exercise of the right will be revived. Its application to the control of colonial legislation will be dealt with later.

§ 50. **The Clergy and Legislation.**—This chapter would not be complete without some mention of the position of the clergy with regard to ecclesiastical legislation. As early as William I. the rule had been laid down that the assemblage of bishops could enact nothing that had not first been approved by the King. It has already been seen

that although summoned to the national assembly the clergy soon ceased to attend and preferred their own meetings in convocation. Hallam says that "they certainly formed a legislative council in ecclesiastical matters by the advice and consent of which alone, without that of the Commons (I say nothing as to the Lords), Edward III. and Richard II. enacted laws to bind the laity." One such instance is the statute *De Haeretico Comburendo*, passed in 1401.[1] In 1534 an Act was passed placing on record a previous declaration made by the clergy in convocation that they could not make any new canons, *i.e.* ecclesiastical ordinances, without the King's previous permission, and that when made, such canons would only bind the laity with the added assent of the King in Parliament. Henceforth any enactments of convocation bind the clergy only, unless they are subsequently embodied in a statute and passed by Parliament. It was in this way that the Book of Common Prayer was settled in its present form in 1662.

Henry VIII. was declared to be "the only Supreme Head on earth of the Church of England." This Act was repealed in the time of Mary and has never been re-enacted, although a statute of Elizabeth accorded to her the title of Supreme Governor. The present position of the Church may be summed up as follows:—It is part of the national constitution: its liturgy and articles of religion, although framed by itself in convocation, have received parliamentary sanction, and cannot be altered without it. Its courts are part of the judicial system, and administer the law of the Church as part of the law of the land, while Parliament has provided punishments for breach of its doctrines and forms of worship in the case of those who have actually become its members and ministers.

§ 51. **The Privileges of Parliament.**—Constant struggle has marked the acquisition by Parliament of its control

over taxation, legislation, and the executive. In the course of those struggles its members have acquired various privileges; for it would be of little use to them to possess powers of control unless they were free from all interference in their exercise.

The chief privileges are those of freedom from arrest, freedom of speech, freedom to determine their own procedure, access to the Sovereign and the right to have the most favourable construction put on all their acts.

Freedom from arrest is one of the "ancient and undoubted" privileges of the members of each House. The attempted arrest of the five members by Charles I. in 1642 is perhaps the most notable instance of its violation. The King's conduct in this matter was described by the Commons as "false, scandalous, and illegal." The privilege, however, does not extend to an indictable offence, *i.e.* one triable at assizes or quarter sessions, or to contempt of court. A recent example of this is the case of Mr. Ginnell, who was imprisoned for contempt of court in Ireland.

Freedom of speech is another of the "ancient and undoubted privileges" of the Houses. The last occasion on which its exercise was directly impugned was in the reign of Charles I., when Sir John Eliot, Denzil Holles, and Benjamin Valentine were imprisoned for seditious speeches in Parliament. The Bill of Rights provided "that the freedom of speech, and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." In the eighteenth century the freedom of speech of members was interfered with by dismissal from any office or commission they held. At the present time each House has sole control over the speech of its members. The publication outside the House of fair and accurate reports of speeches made inside is also privileged. Formerly the privilege did not extend even to

Parliamentary papers published by order of the House. This was shown in an action brought against Hansards, the printers of the official reports of Parliament; but an Act of Parliament now protects official Parliamentary papers. Each House can exclude strangers from hearing its debates if it wishes.

Every peer has the right of access to the Sovereign, and the Commons collectively, through their Speaker, also have this right. The Sovereign is bound to put the most favourable construction on all that goes on in the House, and cannot take notice of anything done there until it is officially brought before him. The above privileges are demanded by the Speaker in the House of Lords at the commencement of every Parliament.

There are other recognised privileges which are not demanded by the Speaker. Thus each House has complete control over its own procedure. In the case of any bill, for example, either House could, if it chose, suspend all its standing orders and pass the measure through all its stages in a single night. But it could not do anything directly contrary to the law of the land. Thus it could not authorise its serjeant to behead one of its members. Each House has the power to imprison anyone who commits a breach of its privileges. In the case of the House of Commons this imprisonment can last only until the end of the session, but the House of Lords may imprison for a definite term. Each House has also the power of expelling any member who is unfit to serve, for example a member guilty of a misdemeanour. Formerly, too, the Commons were accustomed to determine disputed elections; but the trial of election petitions was handed over to the Judges by an Act of 1868.

CHAPTER VI.

THE PROCESS OF LEGISLATION.

§ 52. **Classification of Bills.**—Legislation at the present day is effected by statute passed by the two Houses of Parliament and assented to by the Crown. It is true that other bodies have the right of making binding rules, but the authority under which they do so is always derived from Parliament. Before it is passed a statute is called a bill, and as such is introduced into one or other of the two Houses. At first almost all statutes originated in the House of Commons by way of petition, but it gradually became the established rule that, with the exception of money bills, which must be introduced in the Commons, and bills relating to the peerage, which must be introduced in the Lords, all bills may originate in either House. As a matter of fact, the more important Government bills are introduced in the House of Commons.

Bills may be divided into Public and Private bills. Public bills are those that concern the nation as a whole. Private bills are of a local or personal character, and will be dealt with in a later section. Public bills may again be divided into Government bills and those introduced by private members. There is no actual difference between them in form, but Government bills, having the whole weight of the party in power behind them and the privi-

lege, to a certain extent, of priority of treatment, have much more chance of being passed. To ensure full discussion all bills are "read" three times in each House. A reading is a resolution or vote of the House agreeing with the bill.

§ 53. **A Bill in the Commons.**—Any member who desires to introduce a bill in the Commons must first of all give notice of his desire to the House. He then moves that he may have leave to introduce it. This is usually given without debate, but occasionally a long debate is held on the introduction of an important measure. In the case of bills introduced under what is known as the "ten minutes rule" one short speech for and one against the bill are allowed. Occasionally leave is refused. When leave has been obtained the bill may be immediately introduced and read a first time, and a date is named for its second reading. Another method of introducing a bill is for the member to bring his bill up to the table of the House, when the title is read by the Clerk and the bill is considered to have been read a first time.

On the motion for second reading a general discussion of the whole principle of the bill takes place. It cannot be altered at this stage, but the House can either pass or reject the measure or direct that it be read that day six months or at any other time beyond the probable duration of the session, which is equivalent to a rejection; or, again, the bill may be passed with instructions that it shall be altered in Committee in accordance with some general principle. After second reading the bill is referred to one of the Standing Committees of the House unless the House otherwise orders. This does not apply to money bills or bills to confirm provisional orders. Four committees were set up in 1907 to relieve the congestion of business and two were added in 1919. They are called the A, B, C, D, E,

and Scottish committees, and the various bills are distributed among them by the Speaker, government bills having preference in five out of the six. An important measure, however, would usually be considered by a committee of the whole House, and a motion to this effect would be made after its second reading.

In the Committee stage a bill is considered clause by clause and relevant amendments may be made to it. When this has been finished, the bill as altered is reported to the House, and its consideration on this occasion is called the "Report stage." It may now be again amended, or even sent back to the Committee, but usually a motion is made that it be read a third time. On this being carried the bill has completed all the steps necessary for its passage through the House of Commons, and is then sent on to the House of Lords.

§ 54. **A Public Bill in the Lords.**—Procedure in the House of Lords is very similar to that in the House of Commons. On a bill being brought up from the Commons it is read a first time. Within twelve days of this, notice of the second reading must be given, otherwise the bill gets no further. After its third reading, if there are no amendments, the Lords send a message to that effect to the Commons. If, however, amendments have been made, the bill is returned as amended. The Commons then consider the amendments and send the bill back to the Lords with a message stating their agreement or disagreement. If the two Houses could not agree, it was formerly the practice to hold a formal Conference between representative members, but it is now more usual for Committees of each House to draw up a statement of the reasons for their disagreement. If neither House will give way and no compromise can be arranged, the bill may be dealt with in accordance with the provisions of the Parliament Act, 1911

(see § 55). When the two Houses agree it only remains for the Royal assent to be given.

§ 55. **Conflict between the Houses.**—Though, in theory, the two Houses are of co-ordinate authority with regard to legislation, yet, in practice, the House of Commons on account of its representative character has become the more powerful of the two Houses and is the predominant partner in legislation. In the years before 1911 the problem whether the House of Lords ought to oppose the will of the House of Commons as expressed in a bill passed by that assembly had frequently to be considered.

Disagreements between the two Houses were very often settled by a compromise, as was the case with regard to the Reform of the Franchise and the Redistribution of Seats in 1884-5. If no compromise could be arranged, two courses were then available. The Government of the day could advise the King to dissolve Parliament. The dissolution and the consequent election of members to a new Parliament would show which of the Houses more correctly represented the opinion of the people. If, however, there was no doubt that the House of Commons did represent the opinion of the people and the Lords still refused to yield, the only way out of the difficulty was to create a sufficient number of peers to support the bill so that the minority might be changed into a majority. This was actually done in 1711; and the threat of using this power caused the Lords to give up their opposition to the Reform Bill in 1832 and to the Parliament Bill in 1911.

The Parliament Act of 1911 has rendered obsolete these methods of dealing with conflicts between the two Houses. By the provisions of that measure it is enacted that if a money bill is passed by the House of Commons and sent up to the House of Lords at least one month before the end of the session it may become an Act on the Royal as-

sent being signified, even though it may not be passed without amendment in the House of Lords. In the case of any other public bill (with the exception of a bill containing a provision to extend the duration of Parliament beyond five years) which may have passed the House of Commons in three successive sessions (whether of the same Parliament or not), and having been sent up to the House of Lords at least one month before the end of the session is rejected or unacceptably amended by the House of Lords in each of these sessions, the bill may receive the Royal assent provided that two years have elapsed between the second reading in the first of the three sessions and the third reading in the third. It is now, consequently, an established principle of the constitution that the chief function of the House of Lords is that of acting as a check on rash, hasty or undigested legislation.

Having passed both Houses or having complied with the provisions of the Parliament Act, 1911, the bill is ready for the Royal assent. The Royal assent is given either in person or by commission. The form of assent for ordinary bills is "le roy le veult," for money bills "le roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veulte." Assent is refused by the words "le roy s'avisera." Royal assent has been uniformly granted since 1707, when Queen Anne refused it to the Scotch Militia Bill.

The Crown possesses the prerogative right of dismissing a ministry if there is reason to believe that it has lost the confidence of the electorate. This power was exercised by George III. in 1783-4 and in 1807, and his action was justified by the result of the elections to the new Parliament. The constitutional usage, however, now seems to be that the sovereign should dissolve Parliament only on the advice of the existing responsible minister.

§ 56. **Money Bills** may be defined as those which have for

their object the grant of public money or the imposition of taxes. Procedure on such bills differs from that on ordinary bills. In the first place all such legislation must be founded on resolutions passed by a Committee of the whole House. The revenue and expenditure are settled in the following way. The Ministers of the Crown put forward resolutions stating what money shall be allotted for the national expenditure and how it shall be spent. These Estimates are discussed by the House in what is known as Committee of Supply. Other resolutions are also passed by the House in what is known as Committee of Ways and Means, and these determine whence the money voted in Supply shall be drawn, whether from the permanent taxation which is paid into the Consolidated Fund or from fresh taxation to be imposed. When these various resolutions have been agreed to they are embodied in bills which are passed in the usual way. But before a money bill can become law it has to be passed by the Lords and receive the assent of the King.

Grants of money have always been the peculiar prerogative of the Commons. This was recognised as early as 1407, and again in 1593. In 1671 and 1678 the Commons declared that the Lords had no right of amendment, and thenceforth this has always been acquiesced in. As late as 1904 a Lords' amendment to the Licensing Bill of that year was objected to by the Commons because it conflicted indirectly with this principle. For a long period the Lords had also refrained from rejecting any money bill, but in 1860 they threw out a bill for the repeal of the paper duty, although they had already passed the bills creating the taxes which were to take its place. This bill had only passed the Commons by a narrow majority, but some six weeks later three resolutions were passed by the Commons which affirmed their former rights

as to taxation and stated that the exercise by the Lords of their power of rejecting such bills would be looked upon with "peculiar jealousy."

The rejection by the Lords of the Finance Bill of 1909 led to a struggle between the two Houses, with the result that the Parliament Act 1911 (§ 55) definitely provided that the Lords can neither reject nor delay a money bill.

Another important point with regard to money bills is that the proposal for the grant to be made must come from the Crown through its Ministers. This rule is only a "Convention of the Constitution" and could at any time be altered, but while it is in existence it prevents irresponsible private members from introducing legislation imposing greater burdens on the taxpayers of the country.

§ 57. **Private Bills** arose from the custom of presenting petitions to Parliament to obtain some alteration of the laws in favour of a private individual. At the present day they are of a private, local, or corporate character. Examples of these various classes may be found in Acts to administer a trust estate, to regulate a harbour, or to confer powers on a railway company. They differ from public bills in procedure in certain respects. A private bill commences by petition which must satisfy certain requirements If passed by the examiners it is sent on to the House and read a first time. Even if the special requirements are not complied with, however, this may be condoned and the bill proceed. Between its first and second readings its form is examined, and after the second reading it is considered by a small committee, who hear its promoters and also those who can show that they have a right to object. If passed by the committee it is read a third time. It then goes through the same stages in the other House, and finally becomes law with the assent of the King.

In 1899 a special method of dealing with Scotch private bills was inaugurated. The Secretary for Scotland is empowered to grant Provisional Orders where a private bill would formerly have been necessary. These are then confirmed by an Act of Parliament which on introduction is "deemed to have passed through all its stages up to and including Committee." Provision is made for the necessary examination of the various projects and for the hearing of objections. Important schemes can still be passed like an ordinary private bill. This innovation has considerably decreased the cost of Scottish private bill legislation, and has also relieved Parliament from a good deal of unnecessary work.

§ 58. **Other Methods of Legislation** depend ultimately on statutory authority. One important class of enactments is that of provisional orders. These are schemes of a local nature similar to a private bill, which have obtained the sanction of a Government department. They are confirmed by an Act of Parliament in which they are merely mentioned in a schedule. As a general rule they pass without opposition, being accepted on the authority of the Government department.

In other cases power is given to various bodies such as the Government departments, the Charity Commissioners, and the Rule Committee to make rules and regulations. These may acquire binding force immediately they are made in some cases, while in others it is necessary for them to lie on the tables of the Houses of Parliament for a certain time without objection.

Bye-laws form another class of legislative enactments of which the ultimate validity depends on the statutory authority given to their authors. All these forms of legislation must keep within the powers under which they are enacted.

§ 59. **General Procedure.**—It must not be thought that the sole function of Parliament is to pass bills. It also controls the Executive, and expresses its opinion on various questions of administration in the form of motions. If it is dissatisfied with the conduct of any Minister, it may vote to reduce his salary by some nominal amount to show its displeasure. By means of questions to Ministers every member has a right to inquire into all the details of the administration of the Empire, and thus to ventilate any grievance that may arise. This power is exercised to a considerable extent, and is really one of the chief means by which the growing power of the Executive is kept in check. It is also utilised by Ministers themselves when they wish to make some official pronouncement. This is done by arranging with some member to ask a question to which the desired statement may be made as an answer. Previous notice must be given of all questions, and Ministers may refuse to answer in the interests of the State.

The order of business in the House of Commons on an ordinary day is (1) Private business, *e.g.* private bills. (2) The presentment of petitions. (3) Questions. (4) Matters taken at the commencement of public business, *e.g.* the introduction of new members. (5) Orders of the Day and Notices of Motion. An Order of the Day is some matter which the House has ordered to be considered on a particular day, *e.g.* a reading of a bill. The Government determines what shall be the business for the day, but on Fridays bills introduced by private members have priority over Government business. Notices of motion also have priority over Government business on Tuesdays and Wednesdays after 8.15. But these arrangements are subject to interference by the Government and rarely obtain after Easter or Whitsuntide. The House sits from 2.45 p.m. until 11.30 p.m., no opposed business being taken after

11 p.m.; but on Fridays the hours are from noon to 5.30 p.m. The observance of these times may be suspended on any occasion by resolution of the House and this may give rise to an "all-night sitting." Forty members constitute a quorum, but this is not necessary unless some member calls attention to the fact that there are not forty members present.

PART III.

THE EXECUTIVE.

CHAPTER VII.

THE GROWTH OF THE EXECUTIVE.

§ 60. **The Nature of the Executive.**—The functions of government are not exhausted with the mere passing of laws. Those laws have to be carried out and enforced. The duty of doing this falls upon the Executive. It also has to determine the conduct of the various interests of the State, its relations with foreign countries and the colonies, the magnitude of its defensive forces, the amount of its expenditure and how the revenue necessary to meet it shall be raised, and generally its policy with regard to all the questions of the day.

In the beginning of our history the King personally took part in all branches of the government. Now he does no administrative act by himself, but everything is done through his responsible Ministers. There has never been a time, however, when his action has not been controlled to some extent by a council, and the history of the Executive is best shown by tracing the history of that council, and with it the gradual limitation of the King's power or prerogative and the gradual acquisition of control by the

Parliament. The tendency of the council in its various forms to increase gradually in size and then for an inner committee to develop from it should be carefully noted.

§ 61. **Saxon Administration.**—Before the Norman Conquest the administrative powers of the King were not defined. Their extent depended on his character and his ability. In theory, "the work of the Witena-gemot was at once administrative, legislative, and judicial; laws were promulgated with its counsel and consent; taxation, when required, was raised by its authority; it shared in the decisions of high questions of State, such as the declaration of war and the conclusion of peace; it witnessed grants of land and acted as the Supreme Court of Justice." Though these powers were extensive, yet it was only through the will of the King that the decisions of the Witena-gemot could become effective.

§ 62. **The Effects of Feudalism.**—After the Norman Conquest the power of the King tended to increase. This was due to several causes, not least of which was the strong and energetic character of the occupants of the throne. The introduction of the feudal system made the Norman Kings the supreme landowners of the kingdom, while the oath of fealty to the King which all landowners had to take, whether holding directly from the King or not, brought the subjects into a much closer and more subservient relation to their monarch than had been the case in Saxon times. Moreover, the fact that his subjects owed allegiance primarily to him and not to the lords of whom they held their lands prevented those lords from obtaining the same independent position in administration which they had acquired in Normandy. Again, while the King always had to rely to some extent on national taxation, yet the increase in wealth which he obtained from the feudal dues made him more independent of the National Council.

This independence was further strengthened by the King's right to call upon his subjects for military service. All these various causes united, therefore, to make the Norman much more powerful than the Saxon King. All the branches of the administration were completely subject to the royal power, and the King could do whatever he felt himself strong enough to do.

§ 63. **The Curia Regis.**—It has been already pointed out that the Magnum (or Commune) Concilium superseded the Witan. This new body usually met three times a year —at Christmas, Easter and Whitsuntide—when it considered the King's legislative and financial proposals and decided appeals which were brought before it. But administrative acts could not wait to be considered at one of these meetings: frequently a decision had to be made at once. And so a permanent committee of the Great Council was evolved which was always near by for the King to consult and which took off his hands a good many of the less important details of government. This committee was called the Curia Regis. It hardly had an official position, and its members were rather personal advisers of the King chosen by him at his pleasure, than persons having a permanent right to attend. This council was usually composed of the officials of the royal household, such as the steward and marshal, whose positions tended to become hereditary, and also certain other officials who were purely royal nominees. The most important of the latter were the Justiciar, the Chancellor, and the Treasurer.

The Justiciar was the King's chief executive officer and presided over all legal business. When the King was abroad the Justiciar acted as his representative. By the reign of Edward I., however, this official had developed into the Lord Chief Justice, who was solely concerned with

the administration of the law. The Chancellor was originally a private secretary of the King, and had charge of his correspondence. As this increased in bulk the authority of the Chancellor over it increased also until he determined its contents. He displaced the Justiciar as chief executive officer in the thirteenth century. By the seventeenth century his duties had become mainly legal, but his appointment is now made on political grounds, and he resigns office with the Ministry of which he is a member. The Treasurer, as his name implies, was mostly concerned with the royal revenue.

From this Curia Regis various permanent bodies gradually broke off for the purposes of revenue and justice. One of these bodies was also called Curia Regis, a name which is also sometimes applied to the Great Council out of which the Curia Regis proper had sprung. The history and powers of these offshoots of the Curia Regis will be further considered in a later chapter,

§ 64. **The King's Council until 1295.**—Until the Exchequer and the various common law courts had become definitely separated from the Curia Regis the same body of advisers had been concerned with all the various classes of business it conducted. Up to that time its functions had not been differentiated. But when the fiscal and judicial functions had been removed, the consultative and deliberative remained, and the assembly became the King's Council, following his person, but still with ill-defined constitution and powers. It is not until the reign of Henry III. that one can be at all sure as to the exact powers which it possessed. The minority of that King and his consequent inability to carry on the administration of the country necessitated the doing of that work by the Council. Accordingly its importance greatly increased. Its composition varied from time to time, but

the officers of State and of the household, besides other councillors, the judges, and certain bishops and barons were always of its number. It acted in the King's name and was permanently concerned in every part of the administration. It differed in composition from the Great or Common Council of the realm which was now gradually developing into the Parliament, some persons being common to the two Councils, while others belonged to one or the other alone. Moreover its functions were administrative and executive rather than fiscal or legislative.

After Henry III.'s minority the Council still continued in existence and was now a check on the King's power rather than a medium through which he might act. The councillors had become guides. Its importance is shown by the elaborate regulations laid down by the Provisions of Oxford for its choice. The councillors had to take an oath to advise faithfully. This oath gradually grew in extent and was intended as a kind of check. Meanwhile the barons, acting on behalf of all the estates of the realm, endeavoured to obtain some control over the appointment of the King's Ministers and hence over the administration.

§ 65. **From Edward I. to Richard II.**—By the time of Edward I. the Council had become a permanent body with a recognised position. Its powers were very large, being practically coextensive with those of the King, who in all administrative matters acted through it. There was at this time much confusion as to the respective functions of the Council and the Parliament and accordingly a considerable overlapping of the Executive and the Legislature. It has been already pointed out how the Parliament acquired the sole power over taxation and legislation by forcing the King to give up the right of imposing taxes or making ordinances in his council. It remains to be seen how Parliament acquired control over the Executive

by securing that its approval should be necessary to the appointment of the King's Ministers.

The royal favourites who were raised to office by Edward II. and had great influence in his council were the cause of much irritation on the part of the Parliament. The King was forced to dismiss Gaveston and, later, Hugh le Despenser. Articles of redress for abuse of the existing laws were formulated, and in 1310 the twenty-one Lords Ordainers were appointed. These were a sort of royal council with power to act without the King. The ordinances they drew up provided among other things that all revenue was to be paid into the Exchequer, that the great offices of State were to be filled up by the King with the counsel and consent of the barons, that certain officials should be banished and that the jurisdiction of certain offices should be restricted. For the remainder of Edward's reign appointments to the Council were, as a rule, forced upon him, and in 1327 he was deposed. Throughout his reign he had neglected the care of his kingdom, and entrusted it to ill-chosen advisers who oppressed the people.

The reign of Edward III. is one of constitutional progress. In 1341 a statute was passed directing that accounts should be examined by auditors elected in Parliament, and that all new Ministers should be nominated and sworn in Parliament. Although the King repudiated this concession later in the same year the incident shows the determination of the Parliament to hold the King's Ministers responsible to it. But as yet the Parliament had little real power of checking the King or enforcing any concessions he made. It was, however, frequently consulted by the King as to the conduct of the war with France. This was out of policy in order the better to obtain the money necessary for his expeditions, but it had

the effect of giving the Parliament some voice in matters of national policy as well as in internal administration. The money thus voted by Parliament was not sufficient for the purposes of the war, and the King's Ministers again and again eluded the control of Parliament by aids and customs. Add to this the promulgation of ordinances by the Council and there is little wonder that in the later years of Edward III. there was a growing jealousy between the Parliament and the Council.

§ 66. **Impeachment.**—In 1376 occurs the first instance of impeachment. An impeachment is an accusation brought by the Commons against some individual who is alleged to have acted contrary to the interests of the State. The accused is tried by the Lords, who act as judges, but they cannot give judgment unless the Commons demand it. This allows the Commons an indirect power of pardoning after having made their protest against maladministration. The chief use of impeachment has been as a check on the action of the King's Ministers. The most important cases were those of Bacon 1621, Middlesex 1624, Buckingham 1626, Strafford and Laud 1640, Clarendon 1667, Danby 1678, and Warren Hastings 1788. This method of controlling the Executive has not now been used for over a hundred years, and, with the present system of Cabinet responsibility to Parliament, is not likely to be used in the future. However, there is nothing to prevent its being employed if necessity should arise. In 1376 Lords Latimer and Neville, the chamberlain and steward, besides several commoners, were impeached for extortion. They were found guilty and sentenced.

§ 67. **Richard II. to the Tudors.**—During the minority of Richard II. the Council was under the control of the Parliament, as the latter body chose the principal Ministers. The executive powers of the Council at the same time

became of greater importance owing to the impossibility of the King taking part in administration. In 1385 the King refused to name his intended Ministers to the Commons, but in the next year his chancellor and adviser, Michael de la Pole, was impeached and convicted. The impeachment was solely for political purposes, the object being to ensure his removal.

For some time after this Richard was on amicable terms with the Parliament, but the despotic nature of his rule during the last two years of his reign caused his deposition, and once again showed that a king could not govern apart from his Parliament.

The years which elapsed between the deposition of Richard II. and the commencement of the Wars of the Roses comprise a period of constitutional kingship. Parliament now enforced the rights which it had claimed from previous sovereigns. Henry IV. endeavoured to adjust the relations between the Executive and the Legislature, and in consequence the Council and Parliament worked together harmoniously. In 1404, 1406 and 1410 fresh councils were nominated at the request of the Parliament, and this appointment of councillors at the wish of Parliament continued for some time longer.

During the minority of Henry VI. the Council attained its maximum power. Its work in all branches of the administration was very great. It was composed mainly of lords, and its power is an index of the power of the nobility at the time. On certain occasions Great Councils were summoned to assist the Privy Council, as it had now begun to be called, and these show the consultative functions which the House of Lords had retained from earlier days. In 1437 Henry VI. undertook the duties of government personally and a change may be noticed. The Council ceased to be subordinate to Parliament, and, indeed, gradu-

ally tended to control the latter body. During the Wars of the Roses a large number of the nobility were killed and their power greatly decreased. At the same time the authority of the Commons, which had shown a premature growth under Henry IV., declined, and the whole government of the kingdom was in disorder. There were long gaps between the meetings of Parliament, and Edward IV., by introducing commoners into the Privy Council for the first time, increased his own power.

§ 68. **The Tudor Monarchy.**—When Henry VII. came to the throne a strong administration was necessary to free the country from the internal disorders created by the late war. During the reigns of his successors the dangers from without and the difficulties of the religious settlement within necessitated a strong hand at the helm. The sixteenth century is therefore one of nearly absolute monarchy. This was disguised under constitutional forms, but both Parliament and Council were subservient to the royal influence. The reason underlying this was, however, that the Tudor sovereigns identified their policy with the interests of the State, and the nation recognised that this was so. The executive government of the country was carried on by the King acting, in the main, through his council. This was not a large body, and its members were nominated by the sovereign. Much was left to the individual members, but the supreme control rested with the monarch.

The sixteenth century is remarkable for great progress in many directions. Not least may the change be noticed in matters of government. Before this period government was coercive rather than regulative. "It consisted chiefly," as one writer puts it, "in collecting taxes, suppressing rebellions, and maintaining the authority of the common law." But under the Tudors new features of government arose,

and new machinery was invented for the administration of the laws, which were largely increasing in number and complexity.

§ 69. **The Secretaries of State** first acquired importance in the Tudor period. Through them and the older officers, such as the chancellor and treasurer, steward and admiral, the decisions of the Council were carried out. Originally the secretary was a mere clerk, but in 1539 a second secretary was appointed and the administrative functions of the post were gradually extended. In 1707, on the union with Scotland, a third secretary for that country was appointed, but this office was abolished in 1746. In 1794 a Secretary for War was appointed. Subsequently he was entrusted with Colonial business, and this disposition of affairs lasted until 1854, when a separate secretary was appointed for the latter purpose. In 1858 a Secretary for India was appointed. Each of the five can exercise the power of the others if necessary. From the time of Henry VIII. Anson says "they were the channel through which alone the Crown could be approached in home and foreign affairs, and the medium through which the pleasure of the Crown was expressed." The secretaries were always members of the Privy Council, and when the guiding functions of that body were usurped by the Cabinet they became the heads of the various departments of government, and as such responsible to the Cabinet, to Parliament, and to the nation for the execution of the administrative business of the country.

§ 70. **The Stuart Period** witnessed the struggle between the upholders of the theory of divine right—that the King's power was unlimited and above the control of Parliament—and those who maintained that the King's prerogative could be exercised only in accordance with the law. In the reigns of the first two Stuarts the causes of

conflict were the efforts of the King to tax without the consent of Parliament, and to pervert the course of justice by influencing the judges and also by making use of the Court of Star Chamber. This court had grown out of the judicial functions of the Privy Council, and was now used to enforce the illegal proclamations of the King. It was abolished by the Long Parliament in 1641. The exercise of the suspending and dispensing powers provided the chief cause of quarrel during the last two Stuart reigns. The struggle ended in the Revolution of 1688-1689, and the final establishment of the authority of Parliament over the Executive.

The Council was still the means of government, and its power tended to become greater until, in 1641, it was shorn of nearly all its functions except those which were political and executive. In the reign of Edward VI. it had been divided into five committees for the better execution of the affairs of State. This division continued to be observed more or less, and in the reign of Charles II. several committees were formed to carry on the various departments of government, all being subject, however, to the full Council. Besides these committees an informal secret committee, which was called the Cabal, was also formed to advise the King in his conduct of the affairs of State. To this political adventurers were admitted and it became of bad repute. Several of its members were impeached, and in 1679 a scheme was formulated for making the Privy Council representative and bringing it more into harmony with Parliament. The old council was dissolved and the new scheme tried, but the number of councillors was too large and the old conditions soon revived.

During this period Parliament lost to some extent its hold on the King's Ministers owing to the secret nature of the inner committee of the Council. The consequence was

that it became necessary to assert control by means of several impeachments. An important point to note is that early in the reign of Charles II. supplies were appropriated to the particular purposes for which they were voted.

The interval of the Commonwealth was one of a strong central administration, but it was premature. The nation as a whole did not wish for it, and shortly after Cromwell's death it expressed its dislike of his strong and autocratic government by its acquiescence in the Restoration.

§ 71. **The Executive since the Revolution.**—The history of English administration since 1688 is mainly concerned with the growth of the Cabinet and its general directing power. This will be considered separately in the next chapter. It will be sufficient here to notice that the Cabinet is really a private meeting of selected Privy Councillors, and thus continues the historical development of the executive power of the Crown in Council. The Privy Council itself at the present day consists of a large number of the most prominent men of the time, but it never meets as a whole, and any business which must be carried out by Order in Council is formally done at a meeting of a few of its members specially convened for the purpose. From its committees, however, have sprung a number of important departments of State. As will be seen in a later chapter the Boards of Trade, Works, Agriculture and Fisheries, and Education, are all wholly or partially the outcome of its committees.

CHAPTER VIII.

THE CABINET AND THE PARTY SYSTEM.

§ 72. **The Growth of Parties.**—A party may be defined as a body of individuals having similar views on the leading political questions of the day and combined together to further the adoption and maintenance of those views in the conduct of the business of the State. The Puritan members in the time of Elizabeth had common opinions, but we find the first trace of definite parliamentary parties in the Long Parliament when Roundheads and Cavaliers faced one another, being divided on the theory of Divine Right. Before this time circumstances had been against the formation of parties as they are now understood. Parliament met but rarely. There was little opportunity for its members to know one another or to agree on concerted action. There were few alternatives to the Ministers chosen by the Crown, as no others had any official experience. Consequently there was little real opposition unless the whole Parliament was united in defence of its power or privileges.

The Exclusion Bill of 1679 was the cause of the formation of two parties. By that measure it was proposed to exclude the Duke of York (afterwards James II.) from the throne on account of his professed Romanism. Charles II. dissolved Parliament. Many petitions for a new Parliament were then addressed to him, and their authors became known as "Petitioners." Their rivals and opposers were termed "Abhorrers," as abhorring the attempt to coerce

the King. These names, however, quickly gave place to those of "Whigs" and "Tories." "They differed," writes Hallam, "mainly in this: that to a Tory the constitution . . . was an ultimate point . . . from which he thought it almost impossible to swerve; whereas a Whig deemed all forms of government subordinate to the public good, and therefore liable to change when they should cease to promote that object. . . . The principle of the one, in short, was amelioration, of the other conservation." After the Revolution the extreme Tories became Jacobites, but in the main the country and the Parliament was divided into two great parties, although there was not much public enthusiasm for either side. During nearly the whole of the eighteenth century it was possible for the King and his Ministers, by the judicious use of bribery and their influence over rotten boroughs, to secure a parliamentary majority of the complexion desired. But as public interest increased the possibilities of bribery became less. The Reform Act of 1832, the new ideas as to representation which it inaugurated, and the publicity of debate have gradually emancipated the House of Commons from all traces of direct corruption.

§ 73. **Parties of To-day.**—During the nineteenth century the Whigs and Tories gradually developed into Liberals and Conservatives. As the terms came to be generally understood, a Liberal is one who is more or less dissatisfied with existing conditions and desires to see them reformed. A Conservative, on the other hand, desires to retain existing conditions and only to change them when it is clearly proved that the change will be beneficial. In methods of legislation the Liberal Party was inclined to accomplish its aims by sweeping measures, while the Conservative Party endeavoured to effect necessary changes by a process of gradual evolution and so to avoid a violent disruption of existing conditions. In

practice, however, the distinction was by no means so clearly defined as might have been expected, and since 1914 it has to all intents and purposes broken down.

Besides these two great parties there were, before the War, two other parties or groups, the Irish Nationalist party, consisting of about eighty members and advocating the creation of a separate Parliament and Executive for Ireland, and the Labour party, representing trade unions, co-operative societies and socialist bodies, and advocating a socialistic policy. Socialistic theories vary considerably even on important matters, but the idea underlying them all is the state organisation of individual life and industry for the common good. In this it is opposed by individualism, which aims at leaving to the individual citizen as much freedom of action, social and economic, as is consistent with the national welfare.

Since the War, however, the complexion of political parties has changed considerably. A coalition between the Conservatives and a large section of Liberals has taken place, and it seems possible that in the near future there may be evolved from this coalition a new organisation, representing those who, although advocating extensive and progressive reforms, are opposed to the socialist aims of the Labour party. The latter party may, indeed, become the real "Opposition" of the future. It has already, by its new constitution of 1918, sought to attract to its ranks citizens outside the ordinary trade unions and socialist bodies, and at the general election of December 1918 it definitely withdrew from the Coalition. At this election the Irish Nationalist party practically disappeared, the overwhelming majority of its seats being captured by the republican Sinn Feiners, who in accordance with their aim of setting up a separate state, have ceased to attend the British Parliament.

§ 74. **The Cabinet** is the centre of the whole system of government. In the words of Lord Macaulay: "The Ministry is, in fact, a committee of leading members of the two Houses. It is nominated by the Crown; but it consists exclusively of statesmen whose opinions on the passing questions of the time agree, in the main, with the opinions of the majority of the House of Commons. Among the members of this committee are distributed the great departments of the administration. Each Minister conducts the ordinary business of his own office without reference to his colleagues. But the most important business of every office, and especially such business as is likely to be the subject of discussion in Parliament, is brought under the consideration of the whole Ministry. In Parliament the Ministers are bound to act as one man on all questions relative to the executive government. If one of them dissents from the rest on a question too important to admit of compromise, it is his duty to retire. While the Ministers maintain the confidence of the parliamentary majority, that majority supports them against opposition and rejects every motion which reflects on them or is likely to embarrass them. If they forfeit that confidence, if the parliamentary majority is dissatisfied with the way in which patronage is distributed, with the way in which the prerogative of mercy is used, with the conduct of foreign affairs, with the conduct of a war, the remedy is simple. . . . They have merely to declare that they have ceased to trust the Ministry and to ask for a ministry which they can trust." It is true that this description refers to the Ministry as a whole, but it equally applies to the Cabinet, which is composed of the more important members of the Ministry and numbers variously from about twelve to twenty.

§ 75. **The History of the Cabinet.**—The Cabinet is the

direct descendant of the Cabal in the reign of Charles II. In its growth, however, it has undergone certain changes. The members of the Cabal were the agents of the King, acting with the object of furthering his wishes, whether those wishes were in accordance with the best interests of the State or not. Accordingly they frequently came into collision with Parliament. In 1678 Danby was impeached for having written a letter to the English Minister at Versailles offering that certain things should be done in return for the payment of a large sum of money. The letter was written by the King's orders, but this was held to be no excuse, and it was definitely laid down that a Minister cannot plead the command of the King to justify an illegal or unconstitutional act. This was confirmed in 1715 on the impeachment of Oxford and Bolingbroke. If therefore a Minister was liable to be impeached for conduct which was displeasing to the majority of the House of Commons for the time being, there is little wonder that the problem of safeguarding Ministers and, at the same time, permitting the free expression of the national opinion was solved by the parliamentary majority nominating the Ministers and thus keeping the national representatives and the Executive in harmony.

The Cabinet gradually separated from the Privy Council proper, from which it is really a selection. This separation had become definite by the accession of George I. William III. had at first chosen his ministers from both the parties in the State, but this method proved inconvenient, and by the end of his reign he had inaugurated the custom of choosing his Ministers from among the members of the party which was in power in the House of Commons. But although from this time onward it has become a convention of the Constitution that ministers must be able to command

a majority in the House of Commons, it was not until 1782 that the Cabinet contained no members who were out of harmony with the party in power. Down to that time Cabinet Ministers had been of two classes, efficient and non-efficient or honorary. Efficient Ministers were those belonging to the actual Ministry of the time and to them important State papers were communicated. The system of non-efficient members enabled those who had formerly been in office directing the affairs of State to retain their title of Cabinet Minister when their opponents took office. Lord Rockingham's Cabinet in 1782 was the first which was wholly composed of the members of one political party. This example has since been always followed, except that, where a coalition ministry has been formed, as during the recent war, the members of the Cabinet may have been taken from the parties united for the moment on certain definite aims.

§ 76. **The position of a Cabinet Minister** at the present day can be best described as one of joint and several liability. In his capacity as head of one of the great administrative departments of the State he is responsible for everything that is done or omitted by that department, and his colleagues in the Cabinet are also responsible with him. They must stand or fall together. The method by which the House of Commons expresses its disapproval of his conduct in any particular matter is by an adverse vote on the matter in question. If he does not agree with the policy of the Cabinet on any point it is necessary for him to resign, since, so long as he remains a member of the Cabinet, he is responsible for all that it does. As has been previously pointed out, a Minister is subject to the rule of law and is responsible for the legality of every act authorised by him.

Each Minister has the right to explain to the Sovereign

the working of his own department, but Cabinet decisions must be considered unanimous, and the general medium of communication between the Cabinet and the monarch is the Prime Minister.

§ 77. **The Prime Minister.**—The position of the Prime Minister was not officially recognised until the end of 1905. During the eighteenth century it frequently happened that there was considerable disunion within the Cabinet, and the royal favour was as necessary as popular support for the chief Minister of the Crown. In the early portion of the reign of George III. an attempt was made to reassert the power of the Crown, the object of the King being to choose such Ministers only as were acceptable to himself. This attempt failed, and by 1832 the position of Prime Minister as the leader of the predominant party in the House of Commons had become recognised.

On a new Government coming into power at the present day the King sends for that member of the political party from which the Government is to be formed who is recognised by it as its leader. If there are several members who have claims to be regarded as leader the King selects whom he thinks will be most acceptable to the party. This leader is then entrusted with the task of forming a Ministry. He selects the members of the Government from the prominent persons in his own party, subject to the approval of the King. If, however, he is undoubtedly leader he is practically able to enforce his own opinions in selection.

A new Government, with a change of party, becomes necessary owing to the defeat and resignation of the existing Government. When defeated in the House of Commons on any important question a Government has two courses open to it. It may, through the Prime

Minister, at once resign, or it may advise the King that Parliament should be dissolved, and so by means of a General Election test whether it has the country generally at its back or whether the vote of the House of Commons is a correct index of the people's opinion. If it does not come back with a majority it resigns on the first hostile vote. In such a case the way is clear for the formation of a Ministry from the other party which has a majority. But if a Prime Minister has been called upon to form a Ministry when his party is in a minority in the House of Commons he usually advises the King to dissolve Parliament at the earliest opportunity. Sometimes, however, a Ministry is formed by a coalition of two parties, or of one party with a section of another. In such a case the posts in the Ministry are distributed by arrangement between the leaders of the two sections, the most influential man of the larger party being chosen as Prime Minister.

§ 78. **Cabinet Devolution.**—It is a noticeable feature in the history of the British Constitution that whenever any functions are fulfilled by a committee or council, that body first tends to increase in size and then delegates its business to a committee of itself. The old Curia Regis and the Privy Council are examples of this tendency, which is also discernible in the Cabinet itself. For some time after the Cabinet was limited to efficient members its numbers rarely rose much above twelve. But this number has steadily tended to increase, especially of late. In these circumstances, while the responsibility of all remains unaltered, there is bound to be formed an inner circle or committee of the Cabinet who consult together apart from their colleagues and decide on important questions of policy.

This tendency led to an unusual state of affairs during

the recent war. Prior to December, 1916, the Cabinet consisted of the heads of the principal departments of state, and exceeded twenty in number. With the formation of Mr. Lloyd George's Government at that date, the Cabinet was reduced to five—later seven—members, several of whom were "ministers without portfolio." At the same time the ministry was greatly augmented by the addition of new departments and offices.

The small "War Cabinet" was responsible for the general policy of the Coalition Government and devoted its energies mainly to the prosecution of the war. It was afterwards expanded into an "Imperial War Cabinet" by the inclusion of the Prime Ministers and other representative ministers of the various parts of the Empire. To ensure some measure of the old collective action, a "Standing Committee of Home Affairs" was formed in 1918 from among the political heads of Departments, to consider domestic questions requiring the co-operation of more than one Department or of such importance that they would otherwise call for the consideration of the War Cabinet. With the cessation of war the old system has been to a large extent re-established and towards the end of 1919 a cabinet of twenty ministers took the place of the War Cabinet.

§ 79. **The Position of the Monarch.**—At first sight it might seem that the King had not much to do with the working of the machinery of government. He can do very little personally. At every turn he is hemmed in by rules and conventions which he must not break. On the other hand, his formal interposition is necessary in almost all matters of State. It is true that only in the most serious crisis would he venture to refuse to follow the counsel of his Ministers, but the fact remains that unless his consent is signified, numerous acts of government could

not be carried out. He is entitled to be informed of the plans of his Ministers, before they are put into operation, and it was a breach of this duty that led to the dismissal of Lord Palmerston from office in 1851. All the plans and projects of the Cabinet are submitted to and discussed with him, and the publication of the biographies and correspondence of distinguished statesmen of the past century has shown that the influence which is exerted by the Monarch in shaping those plans and projects is a strong and vigorous one. Nor is this surprising. While Ministries come and go he remains, and thus carries on the thread of continuity in State affairs. He is the depositary of all State secrets. His experience of the working of policies and experiments must be greater than that of the majority of his Ministers, and he is thus able to point out the dangers and difficulties of any proposal and its probable effects. Especially is his influence felt in the conduct of foreign affairs. It would be wrong therefore to imagine that the King is a mere ornamental head of the State: instead, he is one of the most hardworking of its directors, and in view of the present dominating position of the Prime Minister in the Government, the personal influence of a conscientious sovereign on the conduct of affairs may well be greater than that of any man other than the Premier himself.

CHAPTER IX.

THE EXECUTIVE OF TO-DAY.

§ 80. **The Working of Government Departments.**—The Cabinet is the supreme motive power of the modern Executive, but only the most important questions of general policy come before it. All details connected with the working out of such policies and all routine business is left to the various departments of State. At the head of each of these is placed a member of the Government, who is responsible for everything done or omitted by the department over which he has control. In most of these departments there is an under-secretary, who is also a member of the Government. It is a frequent practice for one of these two Ministers to be chosen from the Lords and the other from the Commons, in order that there may be some person in each House competent to answer queries with regard to the work of the department. Both representatives, however, of the Home Office and the Board of Trade are now in the House of Commons.

Besides these parliamentary heads of departments there are a number of permanent officials and a clerical staff. It is probable that when anyone is first appointed to the headship of one of these government offices he has no experience and very little idea of what is necessary. His time is also occupied by his other parliamentary duties. It is therefore necessary that there should be these permanent officials, on whom the parliamentary head may rely, and who preserve the continuity of the administrative

work of the various offices. Indeed to a large extent they direct the executive machinery of the country, but, while they are responsible to their parliamentary head, the latter is the person who is responsible to Parliament, and thus to the nation, for the due administration of its affairs.

§ 81. **The Civil Service** is the name given to the class of appointments which are filled by the permanent staff of the various departments. The majority of these appointments are held by persons who in the first instance enter the service under a system of competitive examinations of varying severity. The higher posts are usually filled by promotion from the lower. The examination system, however, is not quite universal, especially in the Foreign Office, while appointments to the very highest posts are sometimes made from outside sources. Civil servants enjoy the advantages of fixed, rising and for the most part adequate salaries, with the practical certainty of continuity of employment on good behaviour. An added advantage is the grant of a pension on retiring. Against this must be put the fact that employment in the Civil Service is a bar to election for Parliament. The number of civil servants tends to increase, and the voting power which they could exercise in combination might form a serious source of danger to public administration and economy. Thus they might by their votes secure the election of those who would support their desire for greater pay or easier conditions. Any great increase of the number of civil, or indeed of municipal, servants is therefore to be deprecated.

§ 82. **The Departments.**—As has already been seen, there are five principal Secretaries of State, viz. those for the Home Department, for Foreign Affairs, for the Colonies, for War and for India. This does not, however, by any means exhaust the list of the principal executive officers.

The Lord Lieutenant of Ireland and his Chief Secretary are responsible for Irish Affairs, while Scotch affairs are in the hands of the Secretary for Scotland and the Lord Advocate of Scotland. The Presidents of the Boards of Trade, Agriculture and Fisheries, and Education, and the Ministers of Health, Labour, Transport, and Pensions are responsible for the work falling under the heads of those departments. The First Lord of the Admiralty is concerned with the navy, the Secretary of State for Air with aviation, military and civil, while the Chancellor of the Exchequer is the principal Minister in charge of the revenue. The Postmaster-General administers the Post Office, while the First Commissioner of Works has charge over Government works, public buildings, and royal parks. The Lord High Chancellor of Great Britain and the Lord Chancellor of Ireland are the heads of the Judiciary in the two islands respectively, while the actual legal work of the Government is in the hands of the Attorney-General and the Solicitor-General.

Besides the above there are a few official posts with little or no work attached to them. These are usually held by members of the Government whose advice is desired in the Cabinet, but who from age or other reasons are unable to undergo the strain of looking after an important administrative office. If they are members of the Cabinet, it is desirable that they should have some salaried office, in order that their conduct may the more easily be criticised in the House of Commons on the vote for that office. The principal of these sinecures are the offices of Lord Privy Seal, Lord President of the Council, and Chancellor of the Duchy of Lancaster.

In the following pages an attempt will be made to describe briefly the duties of the various ministers mentioned above. The subjects of the defence of the realm

and the revenue, which need somewhat more elaborate treatment, will for the sake of convenience of arrangement be treated by themselves in the next chapter. A further chapter will be devoted to the consideration of the relations of Scotland and Ireland to England. The account of the duties of the Secretaries of State for the Colonies and for India will be found in Part VI., which deals with the Imperial relations of the United Kingdom.

§ 83. **The Secretary of State for the Home Department**, or, as he is better known, the Home Secretary, has many and varied duties. In point of precedence he is the first of His Majesty's five principal Secretaries of State, and as such is the official means of communication between the King and his subjects. As in the case of the other Secretaries his appointment is evidenced by no document, but dates from the delivery to him of three seals by the Sovereign. These seals bear the royal arms, and are used to authenticate documents issuing from the offices of the various Ministers.

It is the duty of the Secretaries of State to countersign documents bearing the sign manual, *i.e.* the signature of the Sovereign. In this way they become responsible for the orders contained in such documents. These documents, such as warrants, appointments and licences, are very numerous, and except where the matters in question clearly come within the province of one of the other Secretaries it falls to the lot of the Home Secretary to complete their validity by countersigning. He must then communicate them to the necessary parties. He receives addresses and petitions intended for the Sovereign, and gives notice of important matters of State intelligence such as treaties and royal births and deaths. He is also the official channel of communication between the Crown and the Church and suggests appointments to vacant benefices.

§ 84. **The Duties of the Home Secretary** are largely concerned with the administration of justice and the maintenance of order. The police of the Metropolis, with the exception of the city police, are entirely under his control and he appoints the necessary officers. For the rest of the country he appoints inspectors on whose satisfactory report depends the receipt by local authorities of their share of the police grant from the central Exchequer.

The appointments of recorders and stipendiary magistrates are made by the Home Secretary, as are also those of the public prosecutor and his staff. He considers claims made by a subject against the Crown, which are known as petitions of right, and determines whether proceedings may be taken in support of them in the ordinary courts.

He is responsible for all prisons, and has full control over them, their staff, and the prisoners. Tickets of leave are issued by him and may be revoked. He may also order the discharge on recovery of criminal lunatics who are detained during "His Majesty's pleasure." In 1908 the power of making rules for Probation Officers was added to his duties. Over reformatories, industrial schools, and inebriate homes he has full powers of regulation and inspection. Generally, therefore, it may be said that he is responsible for the welfare of all prisoners in the kingdom and for the manner in which their sentences are carried out. The prerogative of mercy is exercised by the Crown on his advice. Thus a sentence of death may be commuted to penal servitude for life, a term of imprisonment shortened or an offender pardoned altogether. But a pardon can only be granted for an offence of a public character, and only after the offence has been committed: it must not affect private rights.

The Home Secretary is responsible for the administration

of the statutes relating to aliens. He has full discretion over the grant of certificates of Naturalisation, and may refuse one even if the applicant has complied with the other statutory requirements. He supervises the working of the various Aliens Acts by which undesirable foreigners are excluded from the country. Where extradition of a criminal is demanded by a foreign state in order that he may suffer the punishment due for his crime, the Home Secretary determines whether the crime is of a political nature or not, and only in the latter case can the offender be surrendered. The Home Secretary also prepares the judicial statistics for England and Wales.

§ 85. **The Duties of the Home Secretary (continued).**— Another class of duties for the due observance of which the Home Secretary is responsible is concerned with the industrial organisation and general well-being of the community. He appoints inspectors for mines, quarries, laundries and factories and workshops. He may declare any trade to be dangerous or injurious to health and lay down special regulations as to its conduct. He gives licences for the practice of vivisection and issues statistics with regard to it. He is the authority charged with the administration of the Burial Acts, the Acts relating to cruelty to animals and the preservation of wild birds. Open spaces, explosives and nuisances come within his cognisance. His approval is necessary for bye-laws under various statutes relating to the most varied matters. The Ministry of Health has now taken over those duties connected with lunacy and mental deficiency formerly handled by the Home Office, and it is very possible that in the near future it will appropriate still more of the complex matters over which the Home Secretary has jurisdiction. In the discharge of his duties the Home Secretary is assisted by one permanent and one parliamentary under-secretary.

There is also an assistant under-secretary and a large staff of clerks and inspectors.

§ 86. **The Secretary of State for Foreign Affairs,** as his title indicates, is concerned with the relations of this country with others. Each nation appoints agents to represent it in foreign countries. The British representatives are appointed by the Foreign Secretary and receive their instructions from him. They also report to him. These representatives are of two kinds. Ambassadors and Chargés d'affaires are the channels through which diplomatic intercourse is carried on, while consuls have charge over the well-being of British subjects in foreign lands. The latter have also the duty of reporting to the Foreign Office as to the commercial opportunities in the country to which they are sent. Elaborate instructions are issued for their guidance. In the last few years a number of commercial attachés have been appointed to supplement the information supplied by the consuls. It is the duty of the Foreign Office to circulate the commercial intelligence thus obtained among the various Chambers of Commerce in the Kingdom.

The Foreign Secretary, acting in conformity with the wishes of the Cabinet, determines the policy of the country with regard to other states. All negotiations with and despatches to and from foreign nations are dealt with by his department. The more important despatches are submitted to the Sovereign, and the omission to comply with this rule led to the dismissal of Lord Palmerston in 1851. The making of war and peace and the conclusion of treaties fall to the lot of the Foreign Secretary, but in all important matters of this kind the decision is that of the whole Cabinet and the Foreign Secretary is only the person who carries that decision out.

§ 87. **The President of the Board of Trade** is a member

of the Government whose position has greatly increased in importance of late years, although recent administrative changes have robbed the Board of some of its former functions. The Board of Trade was originally a committee of the Privy Council. Its history can be traced back to the formation of a Council for Trade in 1660. After various vicissitudes it became a permanent committee in 1786 and received its present name in 1862. The Board itself, which includes the principal officers of State and various members of the Privy Council of whom the Archbishop of Canterbury is one, never sits, but its work is done by the President, assisted by a parliamentary secretary and the permanent staff of the department.

Although a Board which never meets may well be considered of little use, the fact that other persons are, nominally at any rate, members of the Board enables its work to proceed smoothly and without delay whenever there is no President or he is ill or away. These other members can then sign the orders of the Board. A similar remark applies to the other Boards of this type.

As its name implies, the work of the Board of Trade is chiefly concerned with the regulation of trade. Since January 1918 the Board of Trade is organised in two main divisions :—(1) the Department of Public Services Administration, and (2) the Department of Commerce and Industry.

(1) **The Department of Public Service Administration** is engaged in statutory and other functions of a permanent nature. The control of merchant shipping is vested in the Marine Department, which keeps a general register of shipping and seamen. Masters, mates and engineers of a ship are required to possess its certificates. It lays down strict rules for engaging and discharging the crew of a ship and generally superintends the relations between

them and the master. Other rules deal with the amount of cargo to be carried, the load-line to be observed, the life-saving apparatus necessary and the general seaworthiness of vessels. The Board has power to detain ships which are undermanned or unseaworthy and it holds enquiries in the case of shipping disasters. It administers savings' banks for merchant seamen, and inspects boilers, anchors and chain cables.

Another branch of the department has financial control over Trinity House, to which is entrusted the care of lighthouses and the examination of pilots. All pilotage authorities must make yearly returns to the Board of Trade. In it also are vested control and supervision over navigable harbours and channels and the foreshore.

The Board has the custody of Imperial and Secondary weights and measures, and deals with questions arising out of the Weights and Measures' Acts.

Other branches of the Public Services department supervise the registration of joint stock companies and their winding up, the administration of bankrupt estates, and the appointment of the official receivers necessary for the work, and the registration of limited partnerships.

The Board had formerly extensive powers of inspection with regard to railways. Any additions or alterations to existing laws required inspection, and the Board enquired into all accidents. These and other powers have now been transferred to the new Ministry of Transport.

(2) **The Department of Commerce and Industry** is mainly concerned with the development of trade, the supplying of information and the duty of suggesting and assisting in matters of national commerce and industrial policy.

One division of this department guards the interests of this country in regard to conventions and foreign treaties.

Another controls gas, water and electric lighting companies, and grants provisional orders and approves of bye-laws for such undertakings. The Department of Industrial Property is constituted out of the old Patent Office, which administered the Patents, Designs, and Trade Marks' Act. Another branch—the Department of Industries and Manufactures—deals with the development of industries, especially in connection with the influence of foreign manufactures abroad, and of alien manufactures at home, upon British production.

The Statistical Department disseminates a large amount of information. The Board of Trade is the collector and publisher of national statistics connected with trade and commerce, and returns of all kinds are digested by the department. The General Economics Department, a new branch of the Board, is intended to keep in touch with the committee of the Privy Council on Scientific and Industrial Research, with the Imperial Institute, now under the control of the Colonial Office, and the National Physical Laboratory.

Until this department was taken over by the Ministry of Labour, the Board maintained Labour Exchanges and Trade Boards, and had considerable powers with regard to intervention in industrial disputes.

(3) **The Department of Overseas Trade (Development and Intelligence)** is a joint Department of the Foreign Office and Board of Trade, and was formed in 1917. It comprises the former Department of Commercial Intelligence of the Board of Trade and a part of the Foreign Trade Department of the Foreign Office; and it now has control of the Consular and Attaché services. It is represented in Parliament by its own Parliamentary Secretary, who occupies the position both of Additional Under-Secretary of State for Foreign Affairs, and also of Addi-

tional Parliamentary Secretary at the Board of Trade. The Department is assisted by an Advisory Committee of business men.

The Board of Trade Journal is the official publication of the Board and is now the medium of announcement both for the Board in general and the Joint Department of Overseas Trade.

The Finance Department of the Board of Trade administers the funds necessary for the duties above mentioned, and deals with the accounts of the various departments. The Board also comprises at present several Emergency Departments, which deal with industrial and commercial matters which have recently come into prominence, *e.g.* the Coal Mines' Department and the Profiteering Act Department.

§ 88. **The Ministry of Labour** is one of the most important of the new departments of State created since the recent war. For many years the creation of such a Ministry had been advocated by Royal Commissions and social reformers, and the urgency of the industrial problems intensified by war conditions made the step a necessary and popular one. The Ministry was established under the New Ministries and Secretaries Act, 1916. By this Act there were transferred to it the powers and duties of the Board of Trade Employment Department, the Trade Boards' Department, and the Chief Industrial Commissioner's Department. Another department—the Labour Statistics Department of the Board of Trade—was transferred to the Ministry in 1917. In addition there was relegated to the Minister such other powers and duties of the Board of Trade or of any other department or authority relating to labour and industry, as the King may by Order in Council transfer to him or authorise him to exercise concurrently with, or in consultation with, the

department or authority concerned. The transference of powers from other departments is still incomplete, but probably in time the work of the new Ministry will be further extended and consolidated.

The Ministry thus has charge of the Labour Exchanges —since 1916 termed Employment Exchanges—the Trade Boards for "sweated" trades, trade disputes, and Unemployment Insurance. It administers the Trade Boards Acts of 1909 and 1918, and has power to enter workshops and inspect wages sheets. The Labour Statistics Department publishes in the *Labour Gazette* statistics in regard to Trade Unionism, strikes, unemployment, cost of living, etc. The Wages and Arbitration branch has considerable powers of intervention in industrial disputes.

In the discharge of his duties the Minister is assisted by one permanent and one parliamentary under-secretary.

§ 89. **The Ministry of Transport**, formed in 1919, is the most recent of the new Ministries, and its powers will undoubtedly be extended when the department is in full working order. At present it is empowered to control the railways, canals, and inland navigation, and can require improvements to be made in docks. It also supervises roads and traffic generally. The Minister is assisted by one parliamentary secretary.

§ 90. **The Ministry of Health**, created in 1919, has now superseded the old Local Government Board, which was formed in 1871 to concentrate in one department the general control over matters of public health, relief of the poor and local government. It was composed of the Lord President of the Council, the Secretaries of State, the Lord Privy Seal, the Chancellor of the Exchequer and a President, but, like the Board of Trade, it never met. Its duties were performed by its President, assisted by parliamentary and permanent secretaries and a large staff. Its authority was one of direction in the relief of the poor and

of supervision in other matters. It had a general control over all local authorities; it gave advice when asked, made orders, sanctioned loans, approved bye-laws, appointed inspectors and audited local accounts. It was the central pension authority for old age pensions. It made reports on all private bills dealing with local matters. It administered the Unemployed Workmen Act of 1905, and had control over the grant to relieve unemployment.

Among other duties which fell to its lot may be mentioned the supervision of such matters as vaccination, motor cars, and the inspection of alkali and other chemical works and the management of the census.

Although this Board, when constituted in 1871, was supposed to form the Health department which had been recommended by the Royal Sanitary Commission of 1869, it never fulfilled this expectation, but devoted itself mainly to Poor Law administration, and neglected Public Health. As a result, not only did Public Health administration suffer, but Health functions eventually grew up in other departments, *e.g.* in the Home Office and Board of Education. The new Ministry of Health was formed in order to fix responsibility and to co-ordinate administration. To it were transferred by the Ministry of Health Act, 1919, subject to certain provisos:—

(1) All the powers and duties of the Local Government Board.

(2) All the powers and duties of the Insurance Commissioners and the Welsh Insurance Commissioners.

(3) All the powers of the Board of Education relating to maternity and infant welfare, and to the medical inspection and treatment of children and young persons.

(4) All the powers of the Privy Council and of the Lord President under the Midwives Acts, 1902 and 1918.

(5) Such powers of supervising the administration of

Part I. of the Children Act, 1908, as have hitherto been exercised by the Secretary of State.

(6) There may also be transferred to the Minister certain specified powers—particularly the care of sick soldiers (now under the control of the Ministry of Pensions) and the control of lunacy (formerly handled by the Home Office)—and any other powers or duties in England and Wales of any government department which relate to matters affecting, or incidental to, the health of the people.

An important feature of the Ministry is the establishment of Consultative Councils, at present four in number, dealing with the medical and allied services, the working of approved societies, local health administration, and general health questions. A department has been formed to deal with the welfare of the blind. Housing is an important branch of work. The Ministry also possesses powers for the initiation and direction of research.

The Minister is assisted by one parliamentary secretary and a large staff of "medical officers." A separate Act established a Board of Health for Scotland, in the Department of the Secretary for Scotland. Ireland has its own Health Insurance Commission.

§ 91. **The Board of Agriculture and Fisheries** was created in 1889, and, like the Board of Trade, never meets. It is composed of the Lord President of the Council, the Secretaries of State, the First Lord of the Treasury, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Secretary for Scotland and other persons appointed by the Crown. The business as regards agriculture is transacted in three departments, the heads of which together with the President and Parliamentary Secretary—who is also the Deputy Minister of Fisheries—form the Administrative Council of the Board. The

Board also administers the Contagious Diseases (Animals) Acts and the Destructive Insects Acts. It supervises regulations with regard to fertilisers and feeding stuffs, and appoints an agricultural analyst. It collects and digests agricultural statistics, and can promote agriculture and forestry in various ways.

With regard to the land, it administers the Small Holdings and Allotments Acts, and controls the enfranchisement of copyholds, the inclosure of commons and the commutation of tithe rent charge.

In 1903 the control of fisheries was transferred to it from the Board of Trade.

§ 92. **The Board of Education** was formed in 1899. It is composed of the Lord President of the Council, the Secretaries of State, the First Lord of the Treasury, the Chancellor of the Exchequer, and a President. Like the other Boards it does not meet. Its administration is presided over by its President, who is responsible to Parliament; he is assisted by parliamentary and permanent secretaries. Its principal duty consists in the control of elementary education in England and Wales. It issues a code of regulations for elementary schools, defining the subjects of instruction. It inspects schools and training colleges, examines teachers and determines disputes as to the necessity for schools. It has taken over the control of the Department of Science and Art, and supervises various museums in London including the Victoria and Albert Museum and the Patent Museum.

The President is assisted by a consultative committee of eighteen containing representatives of various educational bodies.

Besides its duties with regard to elementary education, which will be more fully considered in the chapter on that subject, the Board of Education was in 1903 entrusted

with duties in respect of secondary education. A strong body of secondary school inspectors has been appointed to inspect grant-aided schools and other secondary schools which seek recognition for efficiency.

The Board now includes a Universities' Branch, dealing with the inspection of Universities and the inspection and examination of Training Colleges.

§ 93. **The First Commissioner of Works** is the Parliamentary head of another Board called the Board of Works and Public Buildings. Its other members are the Secretaries of State and the President of the Board of Trade. It has control over the royal palaces and parks, and such of the Government works and public buildings as are not under the control of any other department.

§ 94. **The Postmaster-General** is responsible for the administration of the Post Office. The position is a political one and its occupant is frequently in the Cabinet. It dates back to 1710, although some postal arrangements existed as early as the sixteenth century. The principal date in post-office history is 1837, when the rights and duties of this department were defined by statute.

The work of the Postmaster-General is different from that of his colleagues. They have to direct branches of the public administration or supervise matters of public concern, but he has to manage what is virtually a huge business. This business is a State monopoly, and although it is primarily administered for the public convenience it is intended to produce a profit.

As manager of the Post Office the Postmaster-General has not a very wide discretion, and for any important changes in policy must obtain statutory sanction. Less important changes, if they affect the amount of revenue which will be produced, have to be authorised by the Treasury. But in 1906 an Act was necessary to give the

Treasury power to sanction the carriage of literature for the blind at a special rate.

In normal times the Postmaster-General is the largest government employer. The work of the Post Office is extensive, varied and increasing. It has the sole right to carry letters and to transmit telegrams. It manages (since January 1912) the business formerly conducted by the National Telephone Company. It delivers letters, newspapers and parcels within the United Kingdom on the prepayment of certain charges which are imposed by Parliament from time to time. As a result of an Imperial Postal Conference held in London in 1897 an Imperial penny post was established with India and the Colonies. This was later extended to the United States, but in 1920 the rate was increased to twopence.

Contributions in respect of the National Insurance Acts (1911 and 1918) are effected by means of stamps purchased at the Post Office.

One great department of the Post Office is the Savings Bank. The issue, payment and transmission of money and postal orders is another side of the banking business of the Post Office. It also pays old age pensions and naval and military separate allowances and pensions.

Besides acting as banker the Post Office acts too as stockbroker for the purchase of Government stock and as an insurance company for the purchase of annuities and for life insurance.

§ 95. **The Lord High Chancellor of Great Britain** is one of the most important members of the Cabinet. The history of his office will be found in an earlier chapter (§ 63). At the present day he is the guardian of the Great Seal and is appointed by its delivery to him. He is responsible for all documents to which it is attached. He is the chairman or speaker of the House of Lords, and is

in practice always a member of that body, although this is not necessary. He is the head of the Judiciary of the kingdom, and appoints the judges of the High Court and the County Courts. He also appoints justices of the peace. Among many other judicial appointments made by him may be mentioned that of the Public Trustee. He is himself the head of the Chancery Division of the High Court, and can sit as a judge in that court, the Court of Appeal and the House of Lords, although he usually confines his judicial activities to the last-named assembly. He is the general guardian of all infants and lunatics, is a visitor of all hospitals and colleges where there is a royal foundation and exercises a considerable amount of ecclesiastical patronage. By the Act of 1829 a Roman Catholic cannot hold the office of Lord High Chancellor.

He issues writs for the election of members to a new Parliament, and is also one of the Commissioners for giving the royal assent to bills or opening or proroguing Parliament when this is not done by the King in person.

He acts as Lord Chancellor only in Great Britain. Ireland has its own Lord Chancellor, who has somewhat similar duties with the custody of a duplicate seal of the United Kingdom for use in Irish affairs.

§ 96. **The Law Officers of the Crown** are the Attorney-General and the Solicitor-General. In spite of their names both are barristers; they rank as the official heads of the bar during their term of office. The bar is the term used to describe the whole body of barristers, just as "the bench" refers to the judges. The Attorney-General is the principal law officer, and the Solicitor-General occupies a subsidiary position, but both have much the same duties to perform. They are not allowed to engage in private practice, but may in addition to their official salaries charge fees for all work done. They represent the

Crown in the courts of law and conduct prosecutions and civil suits in which the Crown is interested, such as actions to recover revenue. In the more important cases alone do they take part personally. In the others they are represented by their nominees.

A further and, perhaps, more important duty of these officers is to advise the Government generally and the various departments in particular as to the legality of any proposed course of action.

They are invariably members of the House of Commons, but they also receive a writ of attendance to the House of Lords. It is in accordance with this writ that the Attorney-General attends when the House is sitting as a committee of privileges in peerage cases in order to be the mouthpiece of the Crown. Like the judges, to whom this writ is also sent, he has, however, no right to a seat in the House of Lords: his only function is to give advice.

Their duties only extend to England and Wales, and similar officers are appointed for Ireland. In Scotland their place is taken by the Lord Advocate and the Solicitor-General for Scotland, although the former of these officers has various other duties.

§ 97. **Other Cabinet Ministers**, as has been already mentioned, are the Chancellor of the Duchy of Lancaster, the Lord President of the Council, and the Lord Privy Seal.

The first of these manages the estates and revenues of the Crown within the Duchy of Lancaster. He appoints the county court judges, borough magistrates and justices of the peace for Lancashire, and has a certain amount of ecclesiastical preferment in his gift.

The Lord President of the Council presides over the Privy Council. The secretarial staff of that body, for whom he is technically responsible, are concerned with the due publication of all Orders in Council.

The Lord Privy Seal is a very ancient office, but all its duties were abolished in 1884. The post is sometimes given to an active politician in order that he may be free to devote his attention to a special question, but more often it is given to some distinguished statesman who through old age has become unequal to the performance of active administrative duties, the object being to secure to the Cabinet the general benefit of his advice and experience.

A practice grew up during the recent war of appointing a prominent statesman to Cabinet rank without burdening him with even nominal administrative duties. The "War Cabinet" of Mr. Lloyd George usually contained at least two of these "ministers without portfolio," and the present Cabinet still includes one such minister.

§ 98. **New Departments** created since 1914 included, besides those already mentioned, several of an ephemeral nature, intended to meet merely temporary emergencies, and now disbanded or soon to be disbanded. Examples of these are the Ministries of Blockade and National Service. The short-lived Ministry of Reconstruction has now been dissolved and its work absorbed by the separate departments concerned. Several other departments created by the exigencies of war still remain, and some of these show every likelihood of being permanent.

Of the latter the **Ministry of Pensions** is by far the largest. It was created in 1916, by an Act of Parliament which transferred to it the powers and duties of the Admiralty, the Chelsea Commissioners and the War Office in respect of the administration of pensions and grants to officers and men, and to their widows, children, and dependants; and to persons in the nursing services of the naval and military forces, except "service" pensions, in-pensions, and pensions or grants out of funds provided exclusively for the purpose of Greenwich hospital. The Minister has

power to approve the formation of Local War Pensions' Committees and is assisted by a Special Grants Committee. The Minister is also assisted by two Parliamentary Secretaries, one of whom is also the Financial Secretary.

A department of great importance and activity during the war was the **Ministry of Munitions**, created in June 1915, which took over the work and staff of the Master-General of Ordnance. It possessed considerable powers in regard to prohibiting strikes and establishing compulsory arbitration. It was authorised to suspend any rule or practice in controlled departments which tended to restrict production, and it controlled profits in such establishments. The department was responsible for armaments, ordnance factories, fortification, barrack maintenance, the custody of lands and ranges, and contracts. The Ministry was to be dissolved within twelve months of the termination of hostilities. Its former powers have been reabsorbed by the War Office, but the Ministry still continues; according to an announcement made in November 1918 the contemplated Ministry of Supply is to be developed out of the organisation of the Munitions Department.

Other Departments which have survived the war are the **Ministries of Food and Shipping**, both established under the New Ministries and Secretaries Act, 1916. By this Act His Majesty was empowered to appoint a Food Controller, who should hold office during His Majesty's pleasure. It is the duty of the Controller to regulate the supply and consumption of food in such manner as he thinks best for maintaining a proper supply and to take such steps as he deems fit for encouraging the production of food. It was expected that the Ministry would be dissolved soon after the conclusion of peace, but it has been found necessary to continue it beyond the period originally intended. The Controller is assisted by a Parliamentary Secretary.

The **Ministry of Shipping**, created by the Act of 1916, for the purpose of organising and maintaining the supply of shipping in the national interests, was also intended to be dissolved within twelve months of the termination of war, but, like the Food Controller, the Shipping Controller still continues. He is assisted by a Parliamentary Secretary and a numerous staff, largely borrowed from other Government Departments.

None of these Ministers is of Cabinet rank.

Mention may also be made of the new **Department of Scientific and Industrial Research**, created in 1915, and consisting of the Lord President, Colonial Secretary, Chancellor of the Exchequer, Secretary for Scotland, Chief Secretary for Ireland, President of the Board of Trade, President of the Board of Education, and five others. An advisory Committee was also appointed. In 1916 the Committee was created a body corporate, and a separate Department having its own Parliamentary vote was created in the same year for its service.

§ 99. **Royal Commissions.**—It is noteworthy that many permanent departments of modern executive activity have been the outcome of temporary commissions of enquiry. Originally it was part of the prerogative of the Crown to hold "inquests" for the preservation of law and order. The abuse of this power under the Tudor and Stuart kings led to its curtailment, but the remaining right of enquiry has in the nineteenth century become an important parliamentary method of administration.

For legislation to be effective it is desirable that it should be drafted with full and complete knowledge of the conditions which it is to affect. Accordingly it has become customary to appoint Royal Commissions to enquire into the various social and administrative problems of the time. The commissioners are appointed by the Government of the

day. They are usually selected on account of their peculiar fitness for the investigation proposed, and their chairman is invariably a well-known public man. They have powers to summon and examine witnesses. An exhaustive enquiry is made into the particular problem before the commission, and ts result is embodied in a report. Frequently, preliminary reports are issued from time to time and the whole work of the commission is summarised in a final report. If there is any disagreement among the commissioners majority and minority reports may be made. These reports usually contain recommendations on which future legislation is based. Indeed, it is due to the fact that a large amount of legislation at the present day is thus founded on a thorough and scientific investigation of the problem to be solved, that the present method of parliamentary legislation is at all tolerable. The reports of these commissions present "an inexhaustible supply of material for the legislator, the administrator and the student of English government in all its branches." Besides these Royal Commissions, Parliament can appoint Select Committees of Inquiry for similar purposes from among its own members, while the various Government departments have the power of appointing Inter-Departmental Commissions.

As has been stated, many of the Government departments have developed in this way. Commissioners have been appointed for a temporary purpose, but have become permanent. Examples of this tendency are to be found in the Commissioners of Poor Law and of Public Health, whose work is now carried on by the Ministry of Health and in the Road Board, now the Roads Department of the Ministry of Transport. The Charity Commissioners and the Public Works Loan Board are examples at the present day of the permanent type of commission.

CHAPTER X.

NATIONAL DEFENCE AND FINANCE.

§ 100. **The Committee of Imperial Defence** was constituted in 1904. It was composed of the Prime Minister, who acted as Chairman, the Secretaries of State for War and India, the First Lord of the Admiralty and several other naval and military experts of high rank such as the Chief of the General Staff and the First Sea Lord. It was an elastic body and could summon to its councils persons with special knowledge of the problems to be considered.

Its duty was to determine the general policy of the country with regard to imperial and national defence. Permanent records of its decisions were kept, and continuity of policy was thus secured. The Committee conducted its work through four permanent sub-committees, and plenary sittings took place only six or seven times in the year. The work of these committees proved invaluable during the recent war and the full Committee took on a new importance as an advisory body to the Cabinet.

§ 101. **The Secretary of State for War** is the minister primarily responsible to Parliament and the Crown for the efficiency and control of the army. The appointment of a separate Secretary of State to deal with the army alone dates from 1854. Although called Secretary for War he has no control or jurisdiction over naval matters. He is

the head of the Army Council, which advises him on all questions as to the efficiency of the army. He draws up and presents the army estimates to Parliament, determines the numbers of which the army shall be composed, and generally is the supreme authority on all matters connected with it.

§ 102. **The Army Council** was first established in 1904, and in some respects resembles the Admiralty Board. Besides the Secretary of State for War it is composed of four military members, a civil member, and a finance member. The four military members are responsible to the Secretary of State for War for the general organisation and maintenance of the army. The first of these military members is the Chief of the General Staff, the second the Adjutant-General, the third the Quartermaster-General and the fourth the Master-General of the Ordnance. The Parliamentary Under-Secretary for State fills the position of civil member of the Council and the (Parliamentary) Financial Secretary to the War Office is the finance member. The Secretary of State assigns to the various members the parts of the army organisation for which they are to be responsible.

During the recent war additions to the Army Council were found necessary. A Deputy Chief of the Imperial General Staff, a Director-General of Movements and Railways, and a Surveyor-General of Supply were added, and the first and last mentioned posts are still (early in 1920) in existence.

The office of Commander-in-Chief has been abolished and that of Inspector-General of the Forces substituted. The Inspector-General inspects and reports on the troops and the general efficiency of the army for war. He is under the orders of the Army Council and is at present a member of the committee of Imperial Defence.

§ 103. **The Army.**—The Bill of Rights enacted that "the raising or keeping a standing army within the kingdom in time of peace unless it be with consent of Parliament is against law." As, however, a standing army is a necessity for defence Parliament has, since the Bills of Rights, sanctioned the use of a standing army from year to year, and thereby incidentally provided a reason which compels its own summons every year. The annual Army Act determines the number of men, exclusive of those serving in India, of whom the army is to be composed for the year and makes them subject to military law.

The Indian army forms part of the regular army, but is paid for by the Indian government.

Prior to 1907, the military forces of the Crown consisted of (*a*) the regular army, (*b*) the militia, and (*c*) the volunteers, including the yeomanry. In 1907 the whole army system was reorganised, and for the three lines of defence mentioned above were substituted two. The first consisted of the regular army with its reserves and the militia; the second line—the territorial force—absorbed the yeomanry and the volunteers.

§ 104. **The Militia** was the oldest of our military forces and descended from the old English "fyrd." Originally every free man was bound to serve in this force, which, however, was reorganised from time to time. It was enacted in 1757 that each county should provide by ballot for service in the Militia a definite number of its inhabitants between the ages of 18 and 45. This ballot was suspended from 1829, and in 1852 a system of voluntary enlistment was applied to the Militia, which in 1871 was placed under the control of the Secretary for War. By the Territorial Forces Act of 1907 the Militia finally passed into the Special Reserve and was made liable for foreign service.

The Territorial Force, which forms our second line of defence, was created by the Territorial Forces Act of 1907. It, like the army, depends upon voluntary enlistment. The term of service is for four years, which may be extended to five if the army reserve has been called up for permanent service. The organisation of this force is in the hands of county associations established by the Army Council. The War Office, however, is responsible for the financing and training of the force.

The exigencies of the recent European war necessitated the introduction of a general scheme of compulsory service. Accordingly by the terms of the two Military Service Acts passed in 1916 every male British subject ordinarily resident in Great Britain who was between the ages of 18 and 41 was deemed to have enlisted for general service with the colours for the period of the war. In April 1918 a new Military Service Act raised the age limit to 50, and in certain cases (as of medical men) to 55.

Exemption from service was allowed to clergymen and ministers of all denominations. Under the 1916 acts exemption was allowed in certain cases, *e.g.* unfitness through health or infirmity, or a conscientious objection to warfare, and a system of local and appeal tribunals was established for the examination and decision of claims for exemption. The 1918 act largely curtailed the powers of the tribunals and gave the Crown power to cancel all exemptions, should an emergency arise, by Proclamation.

These Military Service Acts were to expire automatically after the ratification of peace, but by a special act of 1919 compulsory service was prolonged until April 30, 1920, to enable the Crown to retain sufficient forces to meet the requirements of the international situation.

§ 105. **Position of the Soldier.**—By enlistment a soldier gets rid of none of his liabilities as a citizen, but becomes

subject in addition to those attaching to a person "subject to military law." Soldiers are therefore liable to punishment by military courts called Courts-martial for offences against good order and military discipline. The ordinary civil courts, however, have power to say whether the Court-martial has exceeded its jurisdiction, and for certain serious offences, such as murder, the trial must be before them.

A soldier is bound to obey all lawful commands of his superior. If any command is not lawful and he obeys it he is, however, responsible in the ordinary courts for his action, and ignorance of the law will not be accepted as an excuse. The difficulty thus caused is not great in practice, as a case against a soldier who had reasonable grounds for believing a command to be lawful would not be pressed.

An ordinary soldier enlists by making a declaration and taking the oath of allegiance before a magistrate. An officer is appointed by commission under the sign-manual. A soldier must serve his term unless he purchases his discharge within three months of enlisting, but may be discharged at the pleasure of the Crown.

§ 106. **The Secretary of State for Air** is one of the most recent additions to the heads of government departments. The Royal Flying Corps came into existence in 1912, and was at first divided into two wings, the Royal Naval Air Service and the Royal Flying Corps, administered by the Admiralty and War Office respectively. In addition a joint Air Committee was formed, consisting of representatives of both services, with the object of securing co-operation. The powers of this body were very limited, and it failed to secure the essential collaboration. A second Committee, formed in February 1916, was equally unsuccessful. This was followed by an Air Board in May, and by a second Air Board in January 1917, but both of these had inadequate powers.

Finally, in January 1918 an Air Council was formed, and its President given the status of a Secretary of State, as Air Minister. In the same year the naval and military wings of the service were amalgamated, under the Ministry of the Air, as the Royal Air Force; and the Ministry supplied to the Admiralty and War Office contingents of this Force. At the same time an Independent Air Force was organised, working in conjunction with the Royal Air Force, but operating under the Air Ministry.

In 1919 a Department of Civil Aviation was constituted to supervise civil enterprise until the latter is well established. It has power to exercise a general supervision, to grant certificates and issue regulations and licenses, to make grants for the encouragement of aerial development, to provide aerodromes, etc.

§ 107. **The Air Council** is presided over by the Secretary of State for Air. In addition to the President it now comprises the Parliamentary Under-Secretary of State for Air, who acts as Vice-President of the Board, the Chief of the Air Staff and his deputy, the Controller-General of Civil Aviation, the Director-General of Supply and Research, a Finance member, two additional members representing the Army Council and Ministry of Munitions, and a Secretary to the Council.

The office of Controller-General of Civil Aviation is civilian in character. The Finance member has control of finance, lands, and contracts.

At the present time (April 1920) the post of Secretary of State for Air is held in conjunction with that of Secretary for War.

There is also an Inspector General of the Royal Air Force, who does not sit on the Air Council.

§ 108. **The Admiralty Board** is the successor of the Lord High Admiral. It was originally constituted at the

close of the seventeenth century and with two short exceptions has been in existence ever since. It consists of the First Lord, who is the cabinet minister responsible for the navy, four Sea Lords, a Civil Lord, a Deputy Chief, and an Assistant Chief of Naval Staff. To these are added an additional Civil Lord, a parliamentary secretary and a permanent secretary. The last two were not members of the Board as it was originally constituted, but now attend its meetings by virtue of an Order in Council, while the two Chiefs of Naval Staff are recent additions since the re-organisation of the Admiralty in 1917.

It is a consultative body which directs generally the working of the navy. It usually meets once a week at least, but any two of its members can issue an order in an emergency. The various Lords are supposed to be on an equality, but as a matter of fact the Naval and Civil Lords are really subordinate in great measure to the First Lord.

§ 109. **The First Lord of the Admiralty** is responsible to the Crown and to Parliament for all the business of the Admiralty. He is always a member of the Cabinet and represents the navy in Parliament. In conjunction with the Cabinet he determines what provision is to be made for the naval requirements of the Empire.

The First Lord has the duty of general direction and supervision. The other members of the Board are his advisers and are responsible to him for the business of their departments. He also attends personally to questions of promotion and gives nominations to cadets to enter the service.

§ 110. **The other Lords of the Admiralty.**—To each of the members of the Admiralty Board specific duties have been assigned. Several changes in Admiralty organisation were made during the war, the principal feature being that a Naval Staff was embodied in the Board, to isolate

and so facilitate the work of planning and directing naval operations. The duties of the Admiralty are now grouped under the two headings of Operations and Maintenance.

The First Sea Lord, who is also Chief of the Naval Staff, the Deputy Chief of the Naval Staff, and the Assistant Chief of the Naval Staff are responsible for the Operations Division. This Division is concerned with all preparations for war. It advises on all large questions of naval policy and maritime warfare. It controls the organisation of the navy and the distribution of the fleet. All matters relating to the fighting and sea-going efficiency of the fleet are placed under its authority. The organisation of the Naval Staff is at present in a transitional state, but it is evidently destined to be permanent.

The officers in charge of the Maintenance Division are the other three Sea Lords and the Civil Lord. The Second Sea Lord deals with the personnel of the navy. He is in charge of the manning and training of the fleet and of the various barracks and educational establishments. Coastguard and reserve forces, hospitals and the Royal Marines are entrusted to him. The Third Sea Lord deals with all matters affecting the *matériel* of the fleet; he considers all questions in which the construction of ships, their alterations and efficiency are concerned.

The Fourth Sea Lord is in charge of stores and transport services. He also deals with questions of pay, pensions, compensations, and similar financial matters. In addition the naval detention prisons are under his control.

The Civil Lord is responsible for works, buildings, and Greenwich Hospital. The Additional Civil Lord is in charge of contracts and dockyard business.

The Parliamentary Secretary is responsible for the finance and expenditure of the navy. Under the control of the First Lord he draws up the estimates for the year,

which naturally depend to a large extent on what the requirements of the navy are decided to be.

The Permanent Secretary is not a politician, nor indeed are the Naval Lords. He is the connecting pivot on which the departments work, and carries on the traditions of the Board. He deals with its correspondence and has control over its general administration.

§ 111. **The position of the sailor** is slightly different from that of the soldier. This arises from the fact that the navy has not been declared illegal as the army has. The Navy Discipline Act of 1866, which contains "Articles of War," controls the discipline of the navy. Thus sailors may be considered as persons subject to military law although they are not bound by the Army Act. In other respects sailors and soldiers are in a similar position.

The naval forces consist of the men in the navy proper, the reserve, and the royal marines.

An anomalous mode of recruiting for the navy called impressment was formerly employed and has never been formally abolished, although it has not been used for a very long while. It consisted in the seizure and forced service in the navy of persons belonging to the seafaring class.

§ 112. **The Exchequer** was originally a committee of the Curia Regis dealing with financial matters. The judicial business connected with it was early separated from it and handed to the Court of Exchequer, which had been formed for the purpose and was presided over by the Barons of the Exchequer. The business remaining was two-fold, first to ascertain what money was due and then to receive it. The sheriffs were the principal collectors of the revenue, and twice in each year they were bound to appear at the Exchequer and account for the monies they had received. These accounts were kept by means of tallies. A tally was

the half of a stick which had been notched in a certain way to represent the money paid, and had then been split down the middle. The Exchequer kept one half, and the person paying took the other. This formed a kind of receipt.

§ 113. **The Treasury.**—The Treasurer became the principal officer of the Exchequer, and also one of the great officers of State. In 1612 the office was put into Commission, *i.e.* entrusted to a number of persons named in a Commission; since 1714 it has always been in Commission. In the course of the seventeenth century the Treasury separated entirely from the Exchequer. The Treasury Board now consists of the First Lord of the Treasury, several Junior Lords, and the Chancellor of the Exchequer. The latter, assisted by the Financial Secretary to the Treasury, deals with the financial side of the Board. The Parliamentary Secretary to the Treasury acts as the chief whip of the Government, and is the assistant of the First Lord in dealing with the large patronage of the department. The principal duty of the Junior Lords is to act as assistant whips. The whips have to see that the Government have always got a majority in the House of Commons. The Treasury appoints pension officers to deal with old age pensions.

The First Lord of the Treasury is usually Prime Minister, although this is not always the case. He does not take any great part in the management of the department, but he acts as arbiter in disputes between the various departments and the Treasury on financial matters.

§ 114. **The Chancellor of the Exchequer** is the minister responsible for the finance of the nation. The office was originally created in the time of Henry III. in order to serve as a check on the Treasurer. It is only in comparatively modern times that it has become of great political importance.

His chief duty is to adjust the national income to its expenditure. The way in which he proposes to do this is disclosed by an annual statement called the Budget, in which he estimates what will be the expenditure for the year, and then suggests in what way the income to meet it shall be produced. Accordingly it is in this statement that announcements of proposed taxation or remission of taxes are made. The practice of Parliament as to legislation with regard to financial matters has already been explained (§ 56), but the conduct of this legislation and the responsibility for the Government proposals rest with the Chancellor of the Exchequer. He has also, with the assistance of the Parliamentary Secretary, to represent the Treasury in Parliament.

The selection of the names of Sheriffs for the various counties to be submitted to the Sovereign is a remnant of his ancient jurisdiction.

§ 115. **The National Expenditure** may be divided into two parts. The first, which in 1919-20 was over one-fourth of the whole, comprises those items, such as the interest on the national debt, which are charged permanently upon the consolidated fund. The consolidated fund is composed of the revenue for the year. The remainder of the expenditure contains the supplies voted for the Army, Navy and Civil Service.

The estimates of what will be required for these purposes are sent to the Treasury, and there carefully considered in detail and with reference to the total expenditure of the year. Frequently modifications are suggested, but eventually the Chancellor of the Exchequer and the other Ministers concerned agree on the estimates and the Budget is formed on this basis. After Parliament has provided the money through the various stages of Committee of Supply, Committee of Ways and Means and Appropriation Act, it is

the duty of the Treasury to see that the money voted is expended for the purposes for which it was provided.

§ 116. **The National Revenue** is derived from a number of different sources. Some of these have a long and ancient history; others are of modern origin, but space will not permit anything more than a bare enumeration.

The customs are duties imposed on imported articles; the excise, on articles produced at home. These, with the produce of the death-duties, stamps on legal transactions such as conveyances, land tax, inhabited house duty, entertainments tax, and property and income tax, form the bulk of the nation's income, omitting the present heavy excess profits tax which is not, however, expected to be permanent. The Post Office contributes its profits, if any, and there is a small sum arising from the hereditary revenues of the Crown. The list is completed by a number of miscellaneous items, including the interest on the Suez Canal shares and the profits of the Royal Mint.

The revenue is collected by the officers attached to various departments, of which the principal are the Commissioners of Customs, the Commissioners of Inland Revenue, the Commissioners of Woods and Forests and the Postmaster-General. All the money collected by the various departments is paid day by day into the Bank of England to the consolidated fund. Until 1907 the proceeds of certain duties which were ear-marked for local purposes were paid over by their collectors to the local authorities in the various districts, but now every penny is paid straight into the consolidated fund.

§ 117. **The Civil List.**—It will be remembered that originally the King had almost complete control over expenditure, and that the powers of Parliament in this respect were only won after constant struggles. Besides the money voted by Parliament which was specifically appropriated

from the time of Charles II., the King possessed the hereditary revenues. After the Revolution of 1688 Parliament determined exactly for what purposes the King's income was to be used, and made up the amount necessary beyond what was produced by the hereditary revenues. George III. and subsequent sovereigns have surrendered these revenues to Parliament and received in return a Civil List of a fixed annual amount. This is purely for the personal expenses of the Sovereign, and is now fixed at £470,000. Grants amounting to a total of £146,000 are also made to other members of the royal family. The net proceeds of the hereditary revenues received in return by the State for 1916-7 were £530,000, so that the total cost to the taxpayer of the royal family for that year was £85,000.

§ 118. **Checks on Expenditure.**—In the first place all expenditure must be authorised by Act of Parliament, whether by some permanent Act or by the Appropriation Act for the year. As all revenue collected is paid into the consolidated fund, it is necessary for the spending departments to obtain the money they require from this fund. This cannot be done without the intervention first of the Treasury and then of the Comptroller and Auditor-General. The latter is an official, independent of the Government, who holds his office during good behaviour, and, like the judges, can only be removed on an address from both Houses of Parliament. He may not be a member of either House.

All withdrawals of public money from the fund are made in the first place by the Treasury. Its officials have first to send a demand to the Comptroller and Auditor-General to authorise the payment of the sum required. This authority is granted on his being satisfied that there is statutory sanction for the expenditure. When this is

done the Treasury directs the Bank of England to transfer the amount from the Exchequer account to the "supply account" of the Paymaster-General. The department concerned is then able to draw against this account, but may only spend the money for the purpose required.

The Comptroller and Auditor-General, besides controlling in this way the issue of public money, also acts, with the aid of his staff, as auditor of the public accounts. The various departments submit to him statements showing exactly how the money they have received has been spent. These are known as the "Appropriation Accounts." They are carefully examined to see if there has been any departure from the statutory authorisation, and reports embodying the results of this examination are laid before Parliament. The House of Commons refers these reports for examination to a standing committee called the "Public Accounts Committee." "Finance Accounts," showing the amounts received and issued, are also laid before Parliament by the Treasury. The House of Commons, which granted the money, is thus made fully acquainted with the manner in which it has been spent and is in a position to check any irregularity that may have taken place.

CHAPTER XI.

SCOTLAND AND IRELAND

§ 119. **The Union of Scotland and England** had often been aimed at by English sovereigns, but the method by which it was ultimately accomplished was very different from the efforts which had previously been made to that end. On the 24th March 1603 Elizabeth died, and James VI. of Scotland peacefully succeeded to the throne of England as James I.

Although united by the bond of a common sovereign the two kingdoms retained their own Constitutions, Churches and laws. The century that followed the accession of James showed the dangers of this divided rule and the possibility of divergent lines of action being taken. A more complete union was therefore eminently desirable, but the mutual jealousy of the two countries delayed its accomplishment until 1707. The details of the union were settled by commissioners appointed by the two nations, and the agreement they arrived at was embodied in two bills which were passed by the English and Scotch Parliaments respectively and subsequently received the royal assent. The two Parliaments were merged in the new British Parliament, free trade was established between the two kingdoms, taxation and the burden of the national debt were apportioned, and the succession to the Crown was settled in the manner which has been set forth in a previous chapter and made the same for the two kingdoms. Each nation, however, kept its own ecclesiastical and legal organisations and its own system of law.

§ 120. **Scotch Administration.**—For some time after the Act of Union a Secretary for Scotland was appointed, but the office ceased to be filled in 1746 and was not revived until 1885. In the meantime the administration of Scotch affairs was mainly in the hands of the Home Secretary, who acted through the Lord Advocate of Scotland. The latter office was similar to that of the Attorney-General for England, but differed in that various administrative duties were assigned to it. At the present time its holder retains a considerable amount of Scotch patronage and drafts the Government legislation for Scotland, but otherwise his position is very much the same as the English law officer. The latter, however, may not engage in private practice, while the former may.

The Secretary for Scotland now controls the work which was formerly administered by the Home Secretary, except that the latter retains the general administration of factories and workshops, mines and explosives. Other powers were also transferred to the Secretary for Scotland in 1885 from the Privy Council, the Treasury and the Local Government Board. He is president of the Scotch Board of Health—formerly the Scottish Local Government Board—which consists, besides himself, of the Scottish Solicitor-General, the Under-Secretary for Scotland, who acts as Vice-President, Chairman, and five other members. Its duties are analogous to those of the English Local Government Board. There is also a Committee of the Privy Council for Education in Scotland, while the Crofters' Commission has duties as to the land in the crofters' districts. Apart from the special functions of these separate departments the Secretary for Scotland has general control over Scottish administration. It should be noted that the Secretary for Scotland is not one of the five Secretaries of State.

Scotland still retains her own system of law and her

own courts, but the final court of appeal is the House of Lords, and all Acts of Parliament extend to Scotland unless their scope is expressly limited to other parts of the kingdom.

§ 121. **The Union of Great Britain and Ireland.**—The connection of England with Ireland has been of a somewhat different character from that of England with Scotland. The latter nations treated each other as equals, but from the time when, in the reign of Henry II., Strongbow first intervened in a tribal quarrel, Ireland has always been subservient to England. Its history is one long record of internecine strife mingled with conflicts with the English invaders. Never united itself, its chiefs were yet able again and again to overthrow the occasional hesitating efforts of the English Kings for their complete subjection, and it was not until the time of Elizabeth that Ireland could be said to have been finally conquered. Even then the cruelties of Cromwell and the campaign of William III. were still to come.

The first great landmark in the constitutional relations of England and Ireland is the statute passed in 1495, and known as Poynings' Law. Before this, meetings of a Parliament summoned from the English colony in Ireland and closely resembling that of England had been held, but this law limited such Parliaments to the acceptance or rejection of bills approved by the King in his English council. It also subjected Ireland to the English statute law. In 1719 the British Parliament declared its right to legislate for Ireland, but the quarrels between the two countries gradually led to the independence of the Irish Parliament, which was attained in 1782, when the right to legislate for Ireland was renounced by England and the royal veto was left as the sole remaining check on Irish legislation.

From 1782 to 1801 the position of Ireland was very similar to that of a self-governing colony at the present day. The King was represented by a Viceroy, who chose the Irish executive ministers and was himself represented in the Irish House of Commons by his Chief Secretary. The British Parliament had, however, a predominating influence and determined all external questions, while the Irish Parliament had it in their power to embarrass the action of the British ministers by refusing supplies.

In 1801 the separate existence of the Irish Parliament ceased, and it was merged with that of Great Britain in the new Parliament of the United Kingdom, which was created by the Acts of Union passed by the two Parliaments. The Irish representation in this new Parliament was fixed, the succession to the Crown made the same in the two countries, and their subjects given equal rights. Beyond the disestablishment of the Irish Church the provisions of the Act of Union remain practically untouched till 1914, when, after a struggle for "Home Rule" lasting some forty years, the Government of Ireland Act was passed, granting representative and responsible government to Ireland under a separate Irish Parliament. Owing to the European War its operation was suspended by the Suspensory Act, 1914, but subsequent conditions have rendered a revision of the act necessary, and a new measure has been introduced, which will secure two separate administrations and control to Ulster and the rest of Ireland with provision for future union between the two administrations by mutual consent. At present, however, the extent of disaffection in Ireland is such that a forecast of future political arrangements is impossible.

§ 122. **Irish Administration.**—In theory Ireland is administered through the Home Office, but as a matter of fact only formal matters pass through that department,

and the work of Irish administration is really done by the Irish Office, which is presided over by the Chief Secretary to the Lord-Lieutenant of Ireland. The Lord-Lieutenant or Viceroy is the representative of the Crown and the head of the Executive. He is immune from liability for acts done in his official capacity, and either he or his Chief Secretary, but usually the latter, is in the Cabinet. There is a separate Local Government Board for Ireland, which was formed in 1872, and of which the Chief Secretary is President. The Irish Office itself acts as a kind of Home Office for Ireland. The Irish Board of Public Works is controlled by the English Treasury and has extensive powers of granting loans. For educational matters there is a Board of Intermediate Education and also Commissioners for National Education, but somewhat different conditions of control obtain from those existing in England.

The relations of landlord and tenant and questions as to land-holding generally have for long been a fruitful source of controversy in Ireland. The various Irish Land Acts, concluding with that of 1903, by which over one hundred million pounds was guaranteed by the English Treasury, are administered by the Irish Land Commission, while the Irish Congested Districts Board assists in the development of the poorer districts. The Department of Agriculture and Technical Instruction was created in 1899. It deals with agriculture, fisheries and technical education. It collects statistics and controls the distribution of grants for various purposes.

The system of legal administration in Ireland is very similar to that in England, and the final court of appeal is the House of Lords. Statutes of the British Parliament apply to Ireland unless that country is expressly excepted. Irish law is very similar to that of England, the differences having been produced by the enactment of statutes dealing

with the different requirements of the two countries. There is no separate system of law as there is in Scotland, but Ireland has a separate Chancellor, who has the custody of a duplicate seal of the United Kingdom for Irish purposes.

§ 123. **The Channel Islands and the Isle of Man** form part of the British Isles, but have separate autonomous administrations of their own. They are not colonies strictly so called, although there are a good many points of resemblance. In Jersey, Guernsey, and the Isle of Man Lieutenant-Governors are appointed by the Crown, and all communications from the British Government to the islands are made by the Home Secretary through these officers. The Acts of the British Parliament do not extend to these islands unless they are specially mentioned.

The Isle of Man has a Parliament of its own, consisting of two houses, which has power to make laws for the island. The Governor in Council is the name of the higher chamber, which consists of various island officials; the lower is called the House of Keys.

Jersey and Guernsey have separate governments of the same type, while Alderney and Sark are dependencies of Guernsey. The inhabitants put forward the curious claim that these islands are really the nucleus round which the British Empire has grown. They were part of the Duchy of Normandy at the time when William the Conqueror landed in England, and have always since remained part of the British Dominions.

The local legislative bodies and courts have a very ancient origin and have undergone but little alteration. All legislation requires the assent of the Crown in Council, and is subject to the veto of the Governor.

PART IV.

THE JUDICIARY.

CHAPTER XII.

THE HISTORY OF THE JUDICIARY.

§ 124. **The Function of the Judiciary.**—For the good government of a State it is not sufficient that the legislature should pass laws for the people to observe. It is necessary also for the State to select certain persons to decide whether in particular cases those laws have been observed. Such persons are termed judges. If any dispute arises between two or more persons as to the ownership of anything or as to the right of a person to claim compensation for an injury done to him or for the breach of some agreement, the person aggrieved may bring the matter before a judge and have the matter settled according to the justice of the case. In doing this it is the duty of the judge to say what the law is. The law in question may be laid down by an Act of Parliament, or it may be part of the Common Law, *i.e.* that portion of our law which is not set down in any written statute or ordinance but depends on immemorial usage. The Common Law is supposed to have a principle for every possible case, and its rules may be found in cases previously decided, on the analogy of which the judge rests his decision of fresh questions. In doing this it frequently happens

that the judge lays down what is really new law, or in other words performs the function of a legislator. But in theory he merely declares what always has been the law, although perhaps until the case before him it had not been necessary to lay it down definitely.

Besides the settlement of disputes, the judge has in another class of cases to determine whether a person brought before him has done something forbidden by law. This latter function is called his criminal jurisdiction in contradistinction to the former, which is called his civil jurisdiction. It is difficult to say exactly why some matters are considered civil injuries and others crimes, but broadly speaking the latter consist of such acts as militate directly against the public well-being and order, whether or not they also injure some particular person, while the former are merely infringements of some private right. In the earliest times many acts which are now considered crimes were regarded merely as civil injuries. But as the control of the State over peace and order has increased, the list of crimes has grown.

§ 125. **The Early Administration of Justice.**—In Anglo-Saxon times the principal courts were those of the hundred and the shire, although the Witena-gemot acted as an ultimate and supreme court of justice in both civil and criminal cases. Trial in local courts was the rule, but as the powers of the King increased he came to be looked upon as the fountain of justice, and all jurisdiction was exercised by him through his officers, or by landowners who held their title from him.

After the Norman Conquest the local courts still continued and the Curia Regis or Council of the King became the supreme court of the kingdom. William I. separated the ecclesiastical from the secular jurisdiction and gave the control of the former to the clergy.

§ 126. **Itinerant Justices** date from the reign of Henry I. They were not, however, fully organised until the time of Henry II. They tried both judicial and financial matters. They are mentioned in Magna Charta, but their visitations were somewhat irregular until the time of Edward I., who reorganised them and appointed definite circuits. The present system of circuits, on which the judges have power to try all civil and criminal cases, is the direct outcome of the appointment of these earlier Justices in Eyre.

§ 127. **The Common Law Courts.**—The Exchequer was the financial side of the Curia Regis and determined matters relating to the revenue of the country. It separated definitely from the Curia Regis about the end of the twelfth century and acted as a court of law dealing with revenue cases and disputes concerning the national finance.

The Court of King's Bench was another offshoot of the Curia Regis and is itself sometimes known by the latter name. Its origin dates back to 1178, when Henry II. appointed five members of the Curia as a permanent court to hear the complaints of the people, reserving appeals to himself in Council.

The Court of Common Pleas had its origin in the clause of Magna Carta which provided that common pleas, *i.e.* suits between subjects, should be held at some fixed place.

These three last-mentioned courts all arose from the Curia Regis, but a general judicial power was still left in the King's Council. At first the three courts had the same staff of judges, but separate judges were assigned to them in the time of Henry III. Their functions, although at first diverse, became very similar by reason of certain fictions which were resorted to. Thus the Court of Exchequer obtained jurisdiction over a matter which should have

come before the Court of Common Pleas by the suitor alleging that he owed the King a debt which he could not pay owing to the refusal of his adversary to satisfy his claim. The three courts were united by the Judicature Act of 1873 and merged into one division of the High Court by an Act of 1881.

§ 128. **The Court of Chancery** arose out of the equitable jurisdiction of the Chancellor. When people could not obtain redress from the Common Law Courts they petitioned the King, and in 1280 matters of grace and favour were referred to the Chancellor to be reported on before coming before the King in Council. The Chancellor was directed to act in accordance with what was right and equitable. In 1348 all matters of grace were definitely assigned to the Chancellor, and this may be taken as the foundation of the Court of Chancery. It quickly grew in power, and was greatly aided in this respect by the writ of subpoena which compelled the attendance of persons summoned before it. This writ was devised in the reign of Richard II. Frequent quarrels as to the powers of the Court of Chancery occurred between it and the Courts of Common Law. At first the decisions of the Court varied according to the personal opinion of the Chancellor for the time being, but from the reign of Charles II. to the beginning of the nineteenth century the principles on which it acted became gradually as settled as those administered by the rival courts of Common Law. Its procedure, which was very dilatory, was revised in 1852, and in 1873 it became one of the divisions of the High Court. It was then laid down that in cases of conflict the principles it administered were to prevail over the rules of strict law.

§ 129. **The Judicial Powers of the Council.**—It has been seen that both the Common Law and the Chancery

Courts originally emanated from the King's Council. The King was considered to be the fountain of justice, and even after these courts had separated from the Council proper there was a residuary judicial authority left in it.

In 1487 a committee of the Council was established with considerable judicial powers. Various changes in its composition were made and it later became known as the Court of Star Chamber. In the reigns of the earlier Stuarts this court was used for political purposes and to oppress those who thought differently from the King. It was abolished by the Long Parliament in 1641. At the same time were abolished the Court of Requests, which was an earlier and less important offshoot of the Council, the Court of High Commission, a court for ecclesiastical offences established by Elizabeth, and the Council of the North.

There still remained, however, certain judicial powers in the King in Council. The principal of these was the determination of petitions brought before it by persons outside the kingdom. In 1833 the Judicial Committee of the Privy Council was constituted, and this is now the Supreme Court of Appeal from all courts in the British Colonies and Dependencies. It has also certain jurisdiction in ecclesiastical and other matters.

It must be remembered that the peers were members of the King's Council as well as of the Parliament, and it is to the former body therefore that must be assigned the origin of the present appellate jurisdiction of the House of Lords.

§ 130. **Various other Courts** had arisen before the final consolidation of the Courts into a definite system in 1873. Thus the Court of the Lord High Admiral had special jurisdiction over injuries at sea, and also a criminal jurisdiction which was taken away in 1844. Its origin

can be traced to the reign of Edward III. Its powers were defined in the time of Richard II., and after being regulated by various statutes passed in the reigns of Henry IV., Henry VIII. and Victoria its jurisdiction was transferred to one of the Divisions of the High Court in 1873.

The various ecclesiastical courts, although they form part of the English judicial organisation as having jurisdiction over matters relating to the State church, need not be further mentioned, but it should be noted that before 1857 they dealt with testamentary and matrimonial matters. In 1857 this jurisdiction was taken away and special courts were established for Probate and Divorce matters. These two latter courts were in 1873 merged in the Probate, Divorce and Admiralty Division of the High Court.

§ 131. **The Judges.**—It has already been seen that the judges were originally members of the Council of the King, and, indeed, even at the present day a writ is sent to them on the summons of a Parliament in order that they may attend and give advice if asked. In 1897 they were thus asked for their opinions on a difficult case which came before the House of Lords. They held their office at the King's pleasure, but from the time of Richard II. until the beginning of the Stuart period there was no attempt to influence their opinions by threats of dismissal. Indeed, on two occasions in Elizabeth's reign they made a stand against illegal acts of the Crown. In 1607 it was finally decided that, in accordance with the practice which had obtained since Henry VI., the King had no power to hear cases in person. This was followed in 1616 by the case of "Commendams" in which James I. had asked the judges to postpone their verdict until they had spoken with him and they had refused. All the judges except Coke were forced to apologise, and Coke's

refusal to do so caused his dismissal. Similar dismissals took place later, and for the remainder of the Stuart period the judges usually proved submissive to the wishes of the Crown. The power of dismissal was seen to be so dangerous that by the Act of Settlement, 1701, it was laid down that the judges should hold office as regarded the Crown during good behaviour, although in any case they might be removed on an address passed by both Houses of Parliament. This is the nature of their tenure to-day. All the judges except the Lord Chancellor are appointed by the Crown on the advice of the Lord Chancellor.

§ 132. **The Justices of the Peace** are the local criminal magistrates. The origin of their office can be traced back to 1195, when certain knights were chosen to receive oaths for the preservation of the peace. These "Conservators of the Peace" were appointed for every county in 1327, and in 1360 became known as Justices of the Peace, having certain criminal jurisdiction assigned to them. Powers to judge at Quarter Sessions were given in 1389, and in 1542 they were authorised to hold Petty Sessions. Their administrative powers were mostly transferred to County Councils by an Act passed in 1888. A property qualification was formerly necessary, but this was abolished in 1907. They are appointed by the Lord Chancellor, who acts on the advice, for counties, of the Lord-Lieutenant, and, for boroughs, of the Home Secretary. They are unpaid.

§ 133. **Trial by Jury.**—It would be impossible to trace in this book the various forms of procedure which have from time to time obtained in our Courts, but a few notes as to the history of trial by jury which bulks so largely in our judicial system may not be out of place. Its exact origin is obscure, and many theories have been put forward to account for it. It is clear, however, that originally the jurymen were witnesses, rather than judges of the truth.

Of local origin, they were first used to give information of local affairs, especially in financial enquiries. Later they had to determine local disputes, and if some of their number knew nothing about the matter fresh jurymen were added until twelve were unanimous. The Constitutions of Clarendon, 1164, provide the first statutory recognition of their position. In criminal matters they had to say from their local knowledge what men in their district were guilty of offences, and those whom they "presented" or stated to be guilty had to undergo the ordeal. When this method of establishing the guilt or innocence of the accused was abolished in 1218 the custom arose of having a second or petty jury to decide on the truth of the presentment. It was often found that these latter jurors did not know sufficient of the case to come to a decision, and a further custom arose of "afforcing" the jury, that is, adding to it persons who did know the facts. By the time of Edward III. these persons had no voice in the verdict, but merely gave evidence as to what they knew; thus was established the distinction between jurors and witnesses. In the reign of Henry IV. all evidence had to be given in court, and hence the judges had to control the methods in which it was given. Later still the jury entirely ceased to be composed of persons who knew the facts, and in the first half of the eighteenth century the last vestige of their former position as witnesses had disappeared. This jury is now known as the petty jury, while the jury of presentment mentioned above is called the grand jury. In the time of Edward III. it was decided that this petty jury must be unanimous in their verdict. For a grand jury, which varies in number from twelve to twenty-three, it is sufficient for twelve to agree.

CHAPTER XIII.

THE CIVIL LAW COURTS OF TO-DAY.

§ 134. **The Supreme Court of Judicature.**—By the Judicature Act of 1873, with the amending Act of 1875, the existing civil courts were consolidated into the Supreme Court of Judicature. This was divided into two parts, a High Court of Justice and a Court of Appeal. The former was again divided into five divisions for the sake of convenience, viz. Chancery, King's Bench, Common Pleas, Exchequer and Probate, Divorce and Admiralty. In 1881 the Common Pleas and Exchequer Divisions were merged in that of King's Bench, leaving only three divisions of the High Court. To these divisions has been given all the jurisdiction which was exercised before 1875 by the Courts which they succeeded. Practically, that is, they have jurisdiction in all civil actions, together with a certain amount of criminal jurisdiction and an appellate jurisdiction from inferior courts. Certain matters are for the sake of convenience assigned to the respective divisions, but each can give any relief that could be given by any other division, and any judge can, if necessary, sit in any division. The staff of the Chancery Division consists of the Lord Chancellor and six other judges; of the King's Bench Division, of the Lord Chief Justice of England and fifteen other judges; and of the Probate, Divorce and Admiralty Division, of the President of that Division and another judge.

The Court of Appeal hears appeals from the High Court, and also from the Railway and Canal Commissioners, and, on cases under the Workmen's Compensation Act, from the County Courts. Its staff consists of the Master of the Rolls and six Lords Justices of Appeal. The Lord Chancellor, the Lord Chief Justice of England, and the President of the Probate, Divorce and Admiralty Division also sometimes sit as judges in this court. Generally three judges of the court sit together to try an appeal, but in some cases two only are necessary.

The commissioners who as the successors of the Justices in Eyre went on circuit before 1875 are still appointed. Each is now "deemed to constitute a court of the said High Court of Justice." They can therefore do everything that a judge of the High Court can do. Under powers given by the Act of 1875 the circuits have been considerably re-arranged.

§ 135. **The House of Lords** is the final Court of Appeal, not only from the English Courts, but also from those of Scotland and Ireland. A case comes up to it from the Court of Appeal on the certificate of two counsel engaged in it that it is a fit one to be heard by the House. On the hearing of an appeal there must be present three at least of the following persons: (1) The Lord Chancellor of Great Britain, (2) the Lords of Appeal in Ordinary, (3) Peers of Parliament who hold, or have held, high judicial office. Lord Halsbury and the late Lord Brampton are examples of the last class, while the position of the Lords of Appeal in Ordinary has already been explained. The hearing of the case is considered to be a sitting of the House, but other peers do not attend.

§ 136. **The Conduct of an Action.**—A code of rules has been drawn up to regulate the procedure of the Supreme Court. These rules are issued by a Rule Committee

appointed under the Act of 1875, and before coming into force have to be laid before Parliament. If there is no opposition for forty days they become binding. They are altered and amended from time to time.

An action is commenced by writ. This is a notice briefly setting out the claim of the person who brings the action, who is called the plaintiff. It must be served on the person against whom the action is brought, who is called the defendant. Special procedure is used where the claim is for a definite sum of money, and also where the defendant, after service of the writ, fails to put in an appearance. The procedure in the three divisions also varies to some extent. In the King's Bench Division what is known as a Summons for Directions is usually taken out, and under this one of the Masters, who are permanent Law Court officials, settles in what manner the action is to be prepared for trial. He directs what each side is to do, so that the matters in dispute between the parties may be defined ready for the trial. The trial may be before a judge alone or by judge and jury. The former method is more common in the Chancery Division, the latter in the other Divisions. The jury may be an ordinary or a special one. The latter are selected from a list of more responsible persons and are paid more.

The procedure at the trial, at which the parties are usually represented by counsel, is shortly as follows. After the nature of the action has been stated the plaintiff's counsel opens the case, *i.e.* makes a speech showing what is his client's claim, and how it is proposed to prove it. The plaintiff's witnesses are then called and examined. The defendant's counsel has the right of cross-examining each one in order to upset, if possible, the story they have told, or to get further details. If necessary the plaintiff's counsel re-examines the witness as to anything fresh

brought out in cross-examination. When all the plaintiff's witnesses have been examined the defendant's counsel opens his client's case. The defendant's witnesses are then examined, cross-examined and re-examined, and after this is finished his counsel addresses the jury on the evidence in detail and shows, as far as he can, that it is favourable to his client's case. The plaintiff's counsel then replies, and the judge sums up the evidence, and informs the jury on what points their verdict is required. The jury must be unanimous on their verdict unless the parties agree to accept the decision of the majority. When the jury have returned their verdict the judge pronounces judgment in accordance with their findings and deals with the question of costs. Generally the loser is made to pay the costs of the other party. This does not, however, indemnify the latter, as he has always to pay for a number of items which are necessary for the conduct of his case but for which he is not allowed to charge. Appeal is only allowed on a question of law, and not on one of fact. The appeal is in the first instance to the Court of Appeal, whence there is a further right of appeal to the House of Lords.

§ 137. **Inferior Courts.**—In 1846 a system of inferior courts for the trial of matters of minor importance was instituted. These courts are known as County Courts. England is divided into a number of districts, for each of which a County Court is constituted. The Courts are held at various places in the district at various times. The judges, who must be barristers of seven years' standing, are appointed by the Lord Chancellor and may be dismissed by him. Rules of procedure are laid down in a similar way to those for the High Court.

The jurisdiction of a County Court is limited generally to £50, but a recent statute has enlarged this in cases of

contract to £100 for certain Courts. Jurisdiction is also given specially under certain statutes, the most important of which is the Workmen's Compensation Act. Certain Courts also can determine bankruptcy matters, but none can try actions of libel, slander, breach of promise of marriage or seduction.

In cases where the subject-matter of the action exceeds £20 there is an appeal on a point of law to the High Court, but appeals under the Workmen's Compensation Act go straight to the Court of Appeal.

Besides the County Courts there are several other courts, such as the Mayor's Court in London, and the Court of Passage at Liverpool, which have a local jurisdiction. These courts are mostly of very ancient origin, and have so far escaped the hands of the reformer.

§ 137*a*. **Other Courts of Appeal.**—Prior to 1907 a person who had been convicted on a criminal charge was unable to appeal against a conviction. In that year Parliament passed the Criminal Appeal Act, which established the Court of Criminal Appeal. To this court any person who considers himself wrongly convicted on indictment may appeal on a question of law, or, by leave, on a question of fact, or one of mixed law and fact. A further appeal by permission lies from this court to the House of Lords.

The Judicial Committee of the Privy Council, which is composed of those members of the Privy Council who have held high judicial office, together with the six Lords of Appeal in Ordinary, deals with appeals from the courts of the Channel Islands and from English courts abroad.

CHAPTER XIV.

THE CRIMINAL LAW COURTS OF TO-DAY.

§ 138. **The Assizes.**—This is the popular designation of the Courts held by the judges who go on circuit through the various counties. Since 1875 there has been considerable rearrangement, and the country is now divided into eight districts or "circuits." The judges go to all the county and other assize towns three or four times every year and try the civil and criminal cases that have occurred in the district. Barristers accompany the judges on circuit in order to act as counsel for or against the prisoners. As a general rule only cases dealing with the more serious crimes are brought before these courts, but they have authority to try all crimes.

In 1834 the Central Criminal Court, which is popularly known as "The Old Bailey," was established to take the place of the Assize Court for offences committed in the City of London, the County of Middlesex and certain specified parts of the counties of Essex, Kent, and Surrey. Practically it is the Assize Court for London and sits at least twelve times a year.

§ 139. **Quarter Sessions.**—These are courts held in every county once a quarter at stated times for the trial of offences of a less serious character than those usually tried at the Assizes. The Court is composed of two or more of the justices of the peace for the county. One of these is made chairman and acts as judge, consulting his

colleagues when he thinks fit. Certain boroughs have a Court of Quarter Sessions of their own. In these an official known as the Recorder, who must be a barrister of five years' standing, is the sole judge.

Sessions for the Administrative County of London are held twice a month at Newington and Clerkenwell. They are presided over by a paid judge.

Besides trying various offenders Quarter Sessions acts as a Court of Appeal from justices sitting as courts of summary jurisdiction, and on matters of rating, licensing and poor-law administration. In these cases they sit without a jury.

§ 140. **Summary Jurisdiction** is the description given to the powers of justices of the peace in trying minor criminal offences. The absence of a jury is of the essence of the proceedings. The Court is termed Petty Sessions and is formed of two or more justices. Each county is divided into several districts, and in each a Petty Sessional Court is held. Boroughs which have a separate commission of the peace hold their own Petty Sessions presided over by their own justices. The justices are unpaid, but in London and certain other large towns their place is taken by paid magistrates, who must be barristers of a certain standing. One of these magistrates has the same powers as two justices.

The Petty Sessional Courts try and determine a very great number of cases, and their jurisdiction tends steadily to increase. They have power to fine and also to imprison, but the whole of their powers are derived from statutes, and they must not exceed the limits there laid down. In the majority of cases they cannot award more than six months' imprisonment. The matters which come before them include petty assaults and thefts, applications for judicial separation, offences relating to game, offences

against order, such as drunkenness and vagrancy, cruelty to children, breaches of bye-laws and adulteration of food. In some cases which would otherwise have to go to Quarter Sessions or Assizes, the justices have jurisdiction if the accused consents to be tried by them.

By an Act passed in 1907 any court, instead of sentencing an offender, may discharge him if in view of all the circumstances it considers such a course desirable. It may place the offender under a probation officer and order him to comply with such regulations as it may lay down to secure his leading an honest and industrious life in the future. Acts of 1908 have created Borstal institutions for offenders under twenty-one and have given power to detain habitual criminals for lengthy terms.

One justice sitting alone has jurisdiction over certain very small offences, such as drunkenness, but he cannot inflict a higher fine than twenty shillings or greater imprisonment than fourteen days.

§ 141. **Procedure to Trial.**—Besides the determination of minor cases, as stated in the last paragraph, the justices have another duty to perform. In more serious cases they hold a preliminary enquiry to see if there is sufficient evidence to warrant sending the accused for trial to Quarter Sessions or Assizes. If the examining justice—for one is sufficient for this purpose—sends the accused for trial, a written accusation called a "Bill of Indictment" is drawn up. This is laid before the grand jury at the Quarter Sessions or Assizes as the case may be. The witnesses for the prosecution appear before the grand jury, and if the latter think there is sufficient evidence for the accused to be tried they return what is called a "True Bill." It is not necessary for the grand jury to be unanimous, but there must be at least twelve members in favour of the verdict.

As a general rule any person may bring an accusation before the grand jury, but for certain offences the preliminary examination before a justice which is usual in other cases becomes essential.

§ 142. **Procedure at the Trial.**—The trial takes place before the Judge at Assizes or the justices or Recorder at Quarter Sessions, sitting with a petty jury, which numbers twelve. Counsel usually appear both for the prosecution and the defence. Counsel for the prosecution opens the case by stating the principal facts it is intended to prove. His witnesses are then examined, cross-examined and re-examined. After the witnesses for the prosecution have been heard counsel for the defence opens his case, and his witnesses are examined, cross-examined and re-examined. Next counsel for the defence sums up his case and is followed by counsel for the prosecution in reply. If, however, no evidence is called for the accused, or he is the only witness, the final speech of counsel for the prosecution must precede that of counsel for the defence. Before 1898 the accused and his wife were not allowed to give evidence, but by a statute passed in that year this is now permitted if the accused desires it. They cannot, however, be compelled to give evidence. After the speeches of counsel the judge sums up the evidence and instructs the jury on the points of law involved. They then consider their verdict, which will be either "guilty" or "not guilty." They must be unanimous. If they cannot agree they are discharged and the prisoner is retried. If the jury have given a verdict of guilty the judge pronounces sentence. In the case of murder this must be death, but in other cases the judge has a discretion, provided that he does not exceed the maximum laid down for the offence.

§ 143. **Appeal.**—The Criminal Appeal Act of 1907 came into force on the 18th of April, 1908. Before this an

appeal was allowed only on a point of law, and then not unless the presiding judge or justices thought fit to reserve the point for the consideration of the Court for Crown Cases Reserved. But by the above-mentioned Act a Court of Criminal Appeal has been established, and every person convicted on indictment, *i.e.* convicted at Assizes or Quarter Sessions, may appeal against his conviction. This appeal may be on a point of law, or against his sentence, or, with the consent of the presiding judge or the Court of Criminal Appeal itself, on a question of fact. The Court has full powers as to evidence and other matters and will set aside the conviction if there has been in any way a miscarriage of justice, but it will not set aside any conviction even if there has been some technical mistake if no substantial miscarriage of justice has occurred. If a sentence is appealed against the Court may increase or diminish it. The judges of this Court consist of the Lord Chief Justice of England and the judges of the King's Bench Division of the High Court specially appointed for the purpose. Each appeal must be heard by an uneven number of judges, not less than three.

Where a point of law of exceptional public importance is involved an appeal may, with the sanction of the Attorney-General, be made against the decision of the Court of Criminal Appeal to the House of Lords, but otherwise the decision of the Court of Criminal Appeal is final.

§ 144. **Other Criminal Courts.**—The Coroner's Court is composed of the Coroner sitting with a jury which may number from twelve to twenty-three. Its business is to inquire into cases of violent or unnatural death, or sudden death where the cause is unknown. The Coroner must also hold an inquest where he has reason to believe that any death is due to a cause other than illness. If the jury by a majority of twelve return a verdict of murder or

manslaughter against any one such person must immediately be committed for trial, but the preliminary hearing before the justices is usually carried out. The Coroner's Court has also jurisdiction as to treasure trove.

In cases of treason and felony, peers and peeresses are entitled to be tried before the House of Peers. If Parliament is sitting a Lord High Steward is appointed to act as chairman of the House of Lords for the trial. If Parliament is not sitting the court is called the Court of the Lord High Steward of Great Britain, and the Lord High Steward acts as a judge instead of merely chairman, the remaining peers practically forming a jury.

The position of Courts-Martial has already been considered.

§ 145. **Bail and Costs.**—When any person is accused of an offence he must be kept under the supervision of the proper officers unless he is admitted to bail. Bail consists of security given either by the accused or some friend that he will attend the court when required for the purposes of trying the accusation. The Bill of Rights states that excessive bail must not be demanded. Bail is not allowed in cases of treason, and the justices have a discretion as to allowing it in the case of the more serious crimes.

It may be noted that when a person has been charged with an indictable offence, an Act of 1908 has given power to the court to order the payment of certain costs of the prosecution or defence out of local funds. The court may also order the prisoner himself to pay the cost of the prosecution.

PART V.

LOCAL GOVERNMENT.

CHAPTER XV.

LOCAL GOVERNMENT AUTHORITIES.

§ 146. **Historical.**—The history of Local Government in England is one of gradual growth and development. Until the last twenty years, however, this development had not been the outcome of any special plan, but as fresh needs arose measures were taken to satisfy them without much reference to the then existing authorities and their duties. In the nineteenth century in particular a number of different authorities were created for different purposes on the *ad hoc* system, *i.e.* these bodies were created each to carry out a particular duty without reference to other bodies. In 1883 Mr. Chalmers wrote :—"Local Government in this country may be fitly described as consisting of a chaos of areas, a chaos of authorities, and a chaos of rates." At that time there were 27,069 local authorities levying eighteen different kinds of rates. Each had its own staff of officers. Few had the same boundaries. A man was frequently governed by six different local authorities. This "jumble of jurisdictions" has now been cleared away by the Local Government Acts of 1888 and 1894, which, while preserving as

far as possible local traditions and historical associations, have set up the hierarchy of local authorities which will shortly be considered.

In tracing the growth of Local Government it must always be remembered that the boroughs have had a history different from that of the rest of the country. Their areas have always had to be deducted from the general county organisation.

Originally the country was divided into shires, hundreds, and townships, each with its own local assembly. The shire or county court and the hundred moot gradually fell into disuse. After the Norman Conquest much of the local administration fell into the hands of the autocratic manorial court, but with the rise of the parish system a rival authority was created. This was the voluntary parish meeting presided over by the parish priest, who later became known as the "parson" (person) or "rector" (regulator) of the parish. New powers of management were constantly acquired by the parish meeting, and it finally outdistanced its competitor when, in 1601, the duty of poor relief was handed over to it and the churchwardens were made overseers for the purpose. Gradually also the parish meeting became known as the vestry, thus taking the name of its place of assembly.

The whole of the administrative work of the county was gradually entrusted to the justices of the peace. Created originally for judicial purposes, they were found to be the most convenient authority for administration. Entirely a nominated body, they formed until 1888 an anomaly in a constitution whose main watchword is "no taxation without representation." Their work was, however, well done, and their "strict observance of law, abstention from political partisanship, and freedom from corruption" had led to the willing acquiescence of the

county ratepayers in their rule. The transference of their administrative duties to the County Councils created by the Act of 1888 was due, not to any dissatisfaction with their administration, but to the desire for the logical extension of the principle of democratic representation. Experience has shown that the change in the system of representation has left practically unchanged the class of persons who administer the business of the county.

The borough has always looked after its own local affairs. There were many individual differences, and each relied upon its own charter from the Crown. By the fifteenth century, however, their government had, as a general rule, become vested in a body consisting of mayor, aldermen and council. As we have already seen, their privileges were usually confined to a very small number of the inhabitants and corruption was rife. These abuses were swept away by the Municipal Corporations Act of 1835, which provided an uniform constitution for the majority of these towns. The work of reformation was completed by the Municipal Corporations Act of 1882, but the city of London still retains its ancient constitution.

It should be noted that the three great extensions of the parliamentary franchise which the nineteenth century has witnessed have each been closely followed by changes in the form and powers of local authorities. Thus the Reform Act of 1832 was followed by the Poor Law Amendment Act of 1834, which reorganised the relief of the poor, and by the Municipal Corporations Act of the following year. Mr. Forster's Elementary Education Act of 1870, and the Public Health Acts of 1872 and 1875, were preceded by the Reform Act of 1867, while the reorganisation of local administration brought about by the Local Government Acts of 1888 and 1894 followed on the electoral changes of 1884-5. It would be unwise to regard these facts as a

series of historical coincidences merely. They exemplify the mutual influence of Central and Local Government, and the fact that in this country the two have developed side by side.

§ 147. **The Relations of Central and Local Government.** —Although Central and Local Government have developed side by side, yet there has been little connecting them until the last century. The justices and the vestries carried on the local administration in accordance with the powers which various statutory enactments had given them. If they exceeded those powers or exercised them wrongfully any citizen aggrieved could appeal to the Courts. But this was the sole check on maladministration. In the words of Redlich and Hirst: "After the close of the seventeenth century neither King nor Cabinet could exercise any regular and direct control over Local Government; for Local Government was completely localised and decentralised." The only method by which the Cabinet could really exert its influence was through the appointment of justices who shared its views.

During the last century, however, a system of central administrative control has been built up, which is now largely in the hands of the Ministry of Health, although the Home Office, the Board of Trade, the Board of Agriculture and Fisheries, and last, but not least, the Board of Education have certain not unimportant duties to perform. The work of these departments has already been considered. Their control is exercised by advice and inspection, and it is but rarely that compulsion is used, and then only by legal forms and within strictly defined limits. It is by these means that the central and local authorities are kept in touch, and that while the autonomy and individuality of local institutions are preserved the latter are enabled to benefit by the guidance

and control of the collective experience and knowledge of the nation.

§ 148. **The Organisation of Local Government.**—In urban and rural localities different schemes of Local Government prevail; nor is this surprising. The density of population is vastly different in the two kinds of area, and greater control has to be exercised in towns than in the country. Hence urban and rural administration cannot be completely combined.

The unit for Local Government is the parish, but it is only in rural areas that it has a local authority of its own. Above it comes the rural district, which contains one or more parishes. The counterparts of this in urban areas are the urban district and the municipal borough. The administrative counties are made up of rural and urban districts and boroughs. These administrative counties do not correspond exactly with the ordinary counties of England and Wales, as some of the latter are divided into two or three parts for the purposes of administration, while certain large towns have received the same powers of Local Government as a county and so are excluded from the administrative county.

Another area which must be mentioned is the "Union," consisting of one or more parishes grouped together for the better organisation of poor relief. In rural areas the unions coincide with the rural districts mentioned above. The rural district councillors also act as Guardians. The two offices are quite distinct, but only one election is held. In urban areas, on the other hand, separate Boards of Guardians are still elected.

The Metropolis has its own organisation and requires separate consideration.

§ 149. **The Administrative County** is a creation of the Local Government Act of 1888. As has been already

mentioned the administrative and geographical counties do not correspond. For the purposes of administration the three ridings of Yorkshire and the three parts of Lincolnshire have each been treated as a separate county, while Suffolk and Sussex have each been divided into two. The Isle of Wight, the Soke of Peterborough and the Isle of Ely have councils of their own, while the Scilly Isles are separated from Cornwall with an independent council which is in form, although not technically in name, a county council. The administrative County of London brings up the total of separate administrative counties, each with a council of its own, to sixty-three.

Certain boroughs are withdrawn from the jurisdiction of the administrative county and are called county boroughs. These exercise through their councils, which do not differ from those of other boroughs, the powers of local government enjoyed by an administrative county. Before 1888 there were nineteen boroughs which had all the organisation of a county for justice and other purposes and were known as counties of cities or counties of towns. A number of these, together with other boroughs which had a population of at least 50,000, were named in the Act of 1888 as county boroughs. Provision was made for the increase of their number as other boroughs attained a like population. The original number of sixty-one has now risen to sixty-nine. Some of the old "counties of towns," such as Poole, were not made county boroughs, and while retaining their organisation as counties for the purposes of justice are now merged for administrative purposes in the administrative county in which they are geographically situated.

§ 150. **The County Council.**—The administrative and financial business of each administrative county is entrusted to a county council, consisting of a chairman,

aldermen and councillors. In a county borough the town council has the powers, duties and liabilities of a county council.

For the purposes of representation every administrative county is divided into districts, each returning one county councillor. The municipal boroughs within its area, other than those which are county boroughs, return one or more councillors if they are large enough. The number of members depends on the size of the county and varies from 28 for Rutland to 140 for Lancashire. The councillors are elected by the county electors and enrolled burgesses for a period of three years and all retire together.

The aldermen are elected by the councillors for six years, one-half retiring every three years. In number they are one-third of the councillors, although in London the proportion is one-sixth. Their presence on the council is due to the desire to give some measure of continuity in its composition.

The chairman is elected by the council, and presides over its meetings. During his tenure of office he is *ex officio* a justice of the peace for the county.

In London two councillors are elected for each of the sixty parliamentary divisions other than the City of London, while the latter returns four.

Ministers of religion of all denominations, and women, whether married or single, may be members of a council. No person holding a paid office under the council, or being interested in any contract with the council, can become a member. There are also certain other disqualifications similar to those obtaining for parliamentary elections, such as bankruptcy and conviction for felony. Peers owning property in the county can however be members.

The Representation of the People Act 1918 made sweeping changes in the qualification of local government

electors, and established a uniform franchise for town and county. The franchise is given to any man who has, for the qualifying period of six months, occupied jointly or severally, as owner or tenant, land or premises within the electoral area; lodgers are recognised as tenants where they occupy unfurnished rooms. A woman can vote, either if she occupies land or premises within the division or if she is the wife of an elector, provided in the latter case that she has attained the age of thirty. All elections are held by ballot on the same day, and a voter can vote in only one electoral division of a county.

§ 151. **The County District** is a creation of the Local Government Act 1894, and stands midway between the parish and the county. These districts are either rural or urban, the latter comprising municipal boroughs and urban districts proper. This division of the county into districts was based on three classes of areas, the municipal borough, the sanitary district, and the poor-law union. Urban and rural sanitary districts had been created in 1872 as units for sanitary administration, but their boundaries had been fixed without relation to the areas of the poor-law unions or, in some cases, to those of the counties There was in consequence a good deal of overlapping, and considerable alteration of boundaries had to be effected to secure that the whole of each parish should be within the same district, and the whole of each district within the same county. Each municipal borough and urban sanitary district existing in 1894 became an urban county district. That part of a poor-law union which was outside any urban sanitary district became a rural county district, and this applied even if the whole of the poor-law union was outside, provided in both cases that the new district was wholly within a county. If a former rural sanitary district cut a county boundary each part became a rural

county district, except that if one of the parts was so small as not to elect five district councillors it merged in a neighbouring rural district in the same county. Elaborate powers for the revision of boundaries were given to the county councils and the then Local Government Board and have been freely exercised. The powers of the latter—now the Ministry of Health—also extend to the alteration of the boundaries of municipal boroughs. London is divided into twenty-eight Metropolitan boroughs.

§ 152. **Rural and Urban District Councils** are the authorities for Local Government within rural districts and urban districts other than municipal boroughs. Each council consists of a chairman and councillors. The councillors are elected by the parochial electors. The number of councillors for each parish or other area electing guardians in a rural district was made the same as the number of guardians elected before 1894. In urban districts the councillors are either elected by the district as a whole, or, where the district is divided into wards, by the separate wards. The inspectors of the Ministry of Health are entitled to attend and to speak, although not to vote, at council meetings, but only if so desired by the Board.

The chairman is elected by the council, and, unless a woman, is *ex officio* a justice of the peace for the county.

The councillors are elected for three years, one-third going out of office on the fifteenth of April in each year. This device preserves a certain amount of continuity in the district council, just as the appointment of aldermen preserves it for the county council. But the latter body has power to provide that all the district councillors shall retire simultaneously. A district councillor vacates his seat by six months' absence from meetings unless he has some good reason for his absence.

§ 153. **The Municipal Borough** is a town which has

received a charter of incorporation from the Crown. Its legal definition is "any place for the time being subject to the Municipal Corporations Act 1882." The Corporation of a borough consists of the Mayor, Aldermen, and burgesses, the latter being known as citizens in the case of a city. A borough is governed by a Town Council, which is a body distinct and separate from the Corporation.

There are a number of different kinds of boroughs, but all have the same form of government. The differences arise in the powers of administration which are exercised by the Town Council, and in the organisation of justice within the borough boundaries. The principal distinction is between county and non-county boroughs. The former are outside the area of the administrative county, and form administrative counties themselves. The latter are, to a varying degree, subordinate to an administrative county. Boroughs may again be divided into those with more and those with less than 10,000 inhabitants. The importance of this division will be seen when the powers of boroughs are considered in the next chapter.

It may be noted that some boroughs are counties of cities or counties of towns. Some have a separate commission of the peace, or a separate court of quarter sessions, or both, and some return a member to Parliament. Again, in some the head of the Corporation is known as the Lord Mayor.

§ 154. **The Town Council** is the governing body of a borough. It consists of the Mayor, Aldermen, and Councillors. The latter are elected by the burgesses either as a whole or in wards, and their number varies according to the size of the borough. The qualification of a burgess is similar to that of a county elector. The councillors hold office for three years and retire in thirds; new elections are held on the 1st of November in every year. The aldermen are elected by the councillors, to whom they are in the

proportion of one to three. They hold office for six years and half retire every third year. The only difference between them and councillors, apart from their tenure of office, is that they act as returning officers for borough elections where the borough is divided into wards.

The mayor is elected by the council for one year and may be re-elected. He need not previously have been a member of the council. He acts as chairman of the council and is the official head of the corporation. He dispenses the borough hospitality, and is *ex officio* a member of all committees, a justice of the peace and chairman of the borough bench. He remains a justice of the peace for the year following his mayoralty.

A woman, whether married or single, may now fill the position of councillor, alderman or mayor, but in the last case she does not become a justice of the peace. Absence from the borough for two months in the case of the mayor, or for six months in the case of an alderman or councillor, vacates his seat, but illness affords a valid excuse.

§ 155. **The Parish** is the unit of Local Government and originally comprised the sphere of the spiritual labours of a priest. Parishes differed widely in size owing to the distribution of population. Gradually they acquired a civil as well as an ecclesiastical status, but until the beginning of the last century the areas within which the two functions were exercised remained the same. In the nineteenth century, however, the altered conditions necessitated considerable changes in the boundaries and areas of the parishes. But unfortunately the alterations for civil purposes were carried out by one series of Acts known as the Divided Parishes Acts, and those for ecclesiastical purposes by another series known as the Church Building Acts and the New Parishes Acts. As these two series of Acts were passed without any reference the one to the other, the

consequence was that in 1894 only about one-third of the civil and ecclesiastical parishes coincided. Further confusion was caused by the fact that some of the civil parishes were subdivided for the purpose of levying the poor-rate. The Local Government Act of 1894 adopted these poor law parishes for the purpose of creating local authorities, and the definition of a parish to-day is "a place for which a separate poor-rate is or can be made, or a separate overseer is or can be appointed."

As has been previously stated, it was only the rural parishes that were given a fresh local organisation by the Act of 1894. That Act found many parishes situated partly in urban and partly in rural districts and in some cases in more than one county. It provided that the various parts should become fresh parishes, so that no parish should be within more than one county district. Boundaries were greatly altered and simplified under the provisions of the Act, but the greatest divergence still remains between individual parishes. They vary in area from 50 to over 10,000 acres, and in population from none to over 300,000.

§ 156. **Parish Meetings and Councils.**—The urban parish may be disregarded for local government purposes other than those of poor relief. Its "vestry" still appoints two overseers of the poor unless this power, as is frequently the case, has been transferred to the urban district council.

In every rural parish there is a "parish meeting." This is an assembly of the parochial electors, who are "the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish." It is thus the most elementary and democratic form of Local Government existing in the kingdom. It meets at least once a year and cannot be held before six o'clock in the evening, a provision which is of importance to the labourer.

In all parishes with at least 300 inhabitants there must also be a "parish council." In parishes where the number of inhabitants is between 100 and 300 the county council must establish a "parish council" if the parish meeting so desires, and where the population is below 100 it may establish one if it thinks fit. Where, however, a rural parish is co-extensive with a rural district the district council acts as a parish council also.

A parish council consists of a chairman and from five to fifteen councillors. The councillors, who must be parochial electors or other persons resident for twelve months within three miles of the parish, are elected for three years from the 15th April by the parish meeting at its ordinary assembly. Voting is by show of hands, but the chairman or five electors can cause a poll to be taken by ballot. The chairman may be chosen from outside the council, and women are eligible as electors and members. A parish councillor vacates his seat by six months' absence from meetings unless he has a good reason for such absence.

Where there is no parish council the parish meeting must meet at least twice a year. It chooses a chairman, and can appoint a committee to act for it, subject to its approval, in matters which it thinks are best conducted thus.

§ 157. **The Poor-Law Union** is a creation of the Poor-Law Amendment Act of 1834. Before the dissolution of the monasteries in the time of Henry VIII. the relief of the poor had been their care. After that dissolution it became needful to make provision for the "necessary relief of the poor," and the Act of Elizabeth, 1601, imposed that duty on the parish, providing that the churchwardens should be overseers for the purpose, and that the necessary funds should be provided by the occupiers. A subsequent Act in 1662 required each parish to maintain its own poor.

and laid the foundation for the elaborate law of settlement obtaining at the present day. Unscientific experiments and local mismanagement had, by 1834, produced a situation in poor law administration which demanded immediate reform. Commissioners were appointed, and in a remarkably short space of time produced a most able report, on which the Act of 1834 was based, and which still remains the foundation of our present system.

The Act of 1834 provided for the combination of parishes into unions. Convenience was made the sole guide in carrying out this combination, and no reference was made to other local areas. In consequence the unions were frequently situated in several counties and great disparities as to area and population existed. Many alterations of boundaries have been effected in various ways, but more than one quarter of the unions still extend into two or more counties.

§ 158. **The Board of Guardians** is the governing body of the poor-law union. A distinction exists between urban and rural unions. In a rural union, and also in that part of a mixed union which is in a rural district, the rural district councillors for the various parishes and other election districts are the guardians. The functions are different, but one election serves for the two. In urban unions and those parts of mixed unions which are situated in an urban district, however, a separate election is held. The electors are the parochial electors, and women may be guardians. Indeed there are a large number of lady guardians whose work, especially among women paupers, has largely contributed to the efficacy of administration. A guardian vacates his seat by six months' non-attendance at the meetings of the board unless the absence is caused by illness or other good ground. The new Ministry of Health may cause its inspectors to attend meetings of the

boards of guardians in their district. They may speak but not vote.

Every board of guardians may elect a chairman and vice-chairman from outside its own body, and may also co-opt two other persons, but all must be qualified to be guardians of the particular union. The board is elected for three years, and the guardians retire in thirds, but the county council on the board's application may provide for all to retire together. There are now no longer any *ex officio* guardians.

§ 159. **The Metropolis** forms a separate administrative county by itself. The chief administrative body is the London County Council, but the Corporation of the City of London holds a privileged position. The history of London can be traced back to Roman times. The strategical position which it geographically occupies on the chief English river, and on the historical route for communication and trade with the Continent has largely induced its extraordinary growth. Originally the outpost of civilisation, to which were directed the two main streams of European thought and commerce from the Teutonic and Romance nations after their juncture at the narrow straits of Dover, it is now practically the centre of the civilised world. Its history has been long and varied. At many of the greatest crises in English history it has played no unimportant part. Its citizens have always been able to make their power felt, and have led the way for other towns in the acquisition of self-government. The privileged position of its corporation to-day, still surviving unreformed, is a witness to its power and influence.

The government of the City of London is in the hands of a Lord Mayor, Aldermen, and Councillors. It is divided into wards, and the electors, who need not be citizens, must have certain property qualifications. The councillors and

aldermen are elected for the various wards. There are three assemblies. The Court of Common Hall, consisting of all the liverymen, *i.e.* members of the great city companies, meets twice a year, and nominates two aldermen for the office of Lord Mayor. It also elects the Sheriffs. The Court of Common Council consists of the aldermen and councillors. Among other functions it has all the powers of an urban district council. The Court of Aldermen elects the Lord Mayor. The latter is the chief magistrate and dispenser of hospitality for the City: he presides over the three city assemblies, lives at the Mansion House, and has a salary of £10,000, which is invariably insufficient to meet his expenditure.

The London Government Act of 1899 created twenty-eight Metropolitan borough councils, and swept away a large number of small local authorities which then existed. For this purpose the administrative county, excluding the City, was divided into Metropolitan boroughs. Each council consists of a Mayor, Aldermen and Councillors. Each borough is divided into wards, and the electors must have the same qualifications as parochial electors. The councillors are elected for three years, and retire in thirds unless the Ministry of Health, at the request of the Council, provides for their simultaneous retirement. The councillors elect the aldermen, to whom they are in the proportion of six to one. The council elects the mayor. The total number of aldermen and councillors may not exceed seventy, and the elections are held on 1st November. Women are now entitled to be members of the council.

There are certain other bodies which have administrative functions in London. The Metropolitan Water Board was formed in 1902 to take over the undertakings of the various water companies within an area of 620 miles immediately surrounding London. It is mainly composed

of representatives from the London County Council, the Metropolitan borough councils, and the councils of the various local authorities in the surrounding district.

The Metropolitan Asylums Board was created in 1867, and is composed of representatives from the various Boards of Guardians in the Metropolitan district, together with eighteen members nominated by the Local Government Board.

The Home Office is the authority for the Metropolitan Police, and the City Corporation for that of the City. The Thames and the Lee are managed by Conservancy Boards.

By an Act of 1908 a new authority was created for the Port of London. It is called the Port of London Authority and consists of a chairman, vice-chairman, and 28 members. Of these 18 are elected by payers of dues, wharfingers, and owners of river craft, while 10 are appointed by the following bodies:—Admiralty, Board of Trade, London County Council, City Corporation, and Trinity House.

CHAPTER XVI.

THE POWERS AND DUTIES OF LOCAL AUTHORITIES.

§ 160. **General Organisation of Local Administration.**—In the last chapter the nature and composition of the various bodies to which the duty of local administration is entrusted have been considered. The functions of these bodies are two; they must first decide what to do and then do it. The three principal organs by which these functions are carried out are the council, the committee and the official staff. The council itself decides all matters of general policy and importance, but in the majority of cases it would be obviously impossible for it to attend to all matters of detail. The work of administration is so varied that it is necessary to form committees to whom different classes of matters may be delegated. These committees act for the parent council, subject to a varying amount of supervision. Councils and committees, again, can only deliberate and decide on the course of action to be pursued. Their decisions must be carried out by a permanent staff acting under their direction. This staff varies according to individual needs, but certain officers must be appointed by certain classes of bodies.

Further, councils have a general power to regulate their own methods of procedure. The legislature has imposed in certain cases the necessity of holding certain meetings, and forming certain committees, and has laid down what

powers are not capable of delegation; but, subject to these statutory limitations, the organs of Local Government have a perfectly free hand in the organisation of their executive, and a comparison of different bodies of equal powers shows that this capacity for adjustment to existing conditions is wisely exercised. To this general statement there is one exception. The poor-law guardians are shut in on every side by orders of the Ministry of Health intended to produce a uniformity of administration in pauper relief.

By an Act of 1908 the Press has acquired the right to attend meetings of local authorities. Its representatives may, however, be excluded by a special resolution where the local authority considers that course to be for the public benefit.

§ 161. **County Council Committees.**—A County Council has a large area to administer. Wherever its meetings are held some of its members will find it difficult and expensive to attend. Accordingly its powers are largely delegated to committees, of which it may create as many as it pleases. The whole council need meet only four times a year, and committees are often divided into local sub-committees. A County Council must appoint committees for finance, public health and housing, diseases of animals, small holdings and allotments, shops, old age pensions, education and maternity and child welfare. Of these the last must contain a number of co-opted persons and must include women; the third, fourth, and sixth may contain co-opted persons. It must also combine with quarter sessions in appointing two joint committees. One of these is the "visiting committee" for asylums, on which private benefactors may be represented, and to which any county borough, if contributing to the cost of the county asylum, may appoint two members. The other is the "watch committee," which controls the county police.

The county council has no control whatever over this committee, but must provide the money necessary for its expenditure. Nor do the acts of the visiting committee require the approval of the council, although an annual report of its proceedings must be presented. County councils have power to combine either among themselves or with any court of quarter sessions to appoint a joint committee "for any purpose in respect of which they are jointly interested." A county council may delegate certain powers, such as the licensing of stage plays, to the justices, and may also delegate powers to a district council; but cannot delegate to anyone the power of making a rate.

The council itself exercises a general control over administration and decides matters of general policy. Its committees, however, usually have a free hand apart from being restricted from borrowing money or making a rate. The council lays down the powers and constitution of the committees, and its chairman and vice-chairman are members of them all. The committees themselves act through local and particular sub-committees. Their minutes are open to the inspection of all members of the council, and they report their proceedings to the council, although its approval or consent is not necessary for them to act. All important recommendations of a committee are placed before the council itself and decided by that body.

To the "finance committee" is entrusted the control of the council's expenditure. The council itself cannot order a single payment except upon a recommendation of the finance committee, and "any costs, debt or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee." This body therefore exercises a continuous control over expenditure and enables the

financial policy of the council to be effectively carried out.

The following list of committees which are usually appointed is taken from *Local Government in England*, a standard work by Redlich and Hirst: "Main roads and bridges, general purposes, local government, sanitary or public health, contagious diseases (animals), asylums, allotments, county buildings, industrial schools, reformatories, county assessment, parliamentary."

§ 162. **The Powers of the County Council.**—Before the passing of the Local Government Act of 1888 both the administrative and the judicial business of the county was in the hands of the justices of the peace in quarter sessions. That Act transferred "the administrative business of the justices of the county in quarter sessions assembled" to the county council, but the granting of licences for the sale of intoxicating liquors is still in the hands of the justices. A categorical list of the business transferred is given under sixteen headings by the Act, which also provides that the Local Government Board—now the Ministry of Health—may transfer any other powers of the justices to the council which are similar to those already transferred. Besides this the county council has been made the authority to administer certain Acts, and the Ministry of Health has the power to delegate to it by means of Provisional Orders any administrative duties arising within the country which are undertaken by the Central Government. This power has not yet been exercised. The Local Government Act of 1894 has also given it certain powers of supervision and control over other local authorities. These various powers may best be summarised as follows:—

(1) It makes bye-laws "for the good rule and government" of the county, which are enforced by fines.

(2) It supervises the work of rural and district councils

it may alter their boundaries and areas, and, if they neglect their duties, it may do their work for them. It holds local enquiries, can create and dissolve parish councils, and generally disposes of difficulties arising in local administration.

(3) It licenses places for music and dancing, racecourses and theatres, and registers dissenting chapels and the rules of certain scientific societies.

(4) It provides and maintains the buildings necessary for county business, including assize courts and accommodation for the quarter sessions and the justices.

(5) It provides, maintains, and visits pauper lunatic asylums, reformatories, industrial schools, inebriate reformatories and isolation hospitals for infectious diseases, and is the authority for old age pensions.

(6) It executes the Acts relating to the contagious diseases of animals, destructive insects, fish conservancy, wild birds, weights and measures, gas meters, explosives and river pollution.

(7) It appoints its executive officers and staff. The chief officers are the clerk, who is also, except in London, clerk of the peace for the county, the county treasurer, the county surveyors and coroners, public analysts, an agricultural analyst, an official sampler, a director of education and generally a medical officer.

(8) It repairs main roads and bridges, but may arrange to pay another local authority to do the work. It determines what are main roads, and may contribute to the cost of repairing any highway or footpath in the county.

(9) It provides small holdings and allotments, and may purchase land, using compulsion where this is necessary, and may borrow money to pay for it.

(10) Through the joint committee of council and justices it controls the county police, but in the Metropolis the

police are directly under the control of the Home Secretary.

(11) It can take all necessary legal proceedings whereby to oppose private bills in Parliament, but until 1903 was unable itself to promote a bill. The London County Council, however, has always had this latter power.

(12) It appoints representatives upon the County Insurance Committee under the National Insurance Acts.

(13) It supervises the execution of the Maternity and Child Welfare Act, 1918.

(14) It can supply and aid higher education and is the elementary education authority for the county.

(15) It makes a rate, and can borrow money with the consent of the Ministry of Health. The purposes for which it may borrow are the consolidation of its debt, the purchase of necessary land and the execution of any permanent work; but its total debt may not exceed one-tenth of the annual rateable value of property in the county unless it obtains parliamentary confirmation of a Provisional Order to that effect.

§ 163. **County Finance.**—Apart from certain contributions from the Imperial Exchequer the principal source of income of the county council is the proceeds of the county rate. At the beginning of each local financial year an estimate of the receipts and expenses for the year is submitted and passed, although this may be revised at the end of six months. The amount of the county rate is determined by this estimate. Some of the expenses of the council are spread over the whole county, while from others certain parts of the county are exempt. Care has to be taken in collecting the rate to allow for these exemptions. In particular the police rate is kept separate, although it appears on the same demand note. The Exchequer contributions are ear-marked for particular purposes. These

various sources of income necessitate somewhat elaborate accounts, which are kept by the county treasurer. He makes all payments out of the county fund, and except for the specific requirement of an Act of Parliament or the order of a court will not act unless he receives an order signed by three members of the financial committee. All cheques must be countersigned by the clerk of the council. Lastly, the county council accounts are subjected every year to a searching audit by a district auditor appointed by the Ministry of Health. He has power to disallow amounts improperly paid, and to surcharge them against the persons authorising the payment. The Ministry of Health usually upholds the disallowance, but remits the surcharge.

§ 164. **The Working of District Councils.**—As in the case of the county so also in that of the urban or rural district, the work of local administration is performed by the council, committees and staff. In the main the organisation of the two kinds of councils is the same, but minor differences exist which are necessitated by the difference in their work. The term urban district strictly includes a borough, but here and in the next five paragraphs it is confined to those urban districts which are not boroughs.

The councils largely do their work through committees, which may be appointed "for the exercise of any powers which in the opinion of the council can be exercised by committees." The committees may contain persons who are not members of the council, but, unlike the committees of a county council, their acts must be submitted to the district council for approval. An exception to this rule occurs, however, in a committee appointed for any sanitary or highway business, which can be given full powers except as to loans, rates and contracts. Another exceptional com-

mittee is the parochial committee of a rural district council, which may incur expenses to a prescribed amount and may co-opt only persons who are members of the parish council. The district council may indeed appoint the latter body to act as its parochial committee. Joint committees may be formed by district and parish councils "for any purpose in respect of which they are jointly interested."

Every urban district council must appoint as officers a "medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer," besides their assistants and clerks. With the exception of the surveyor, similar officers are appointed in rural districts, but in the latter case the Ministry of Health must approve of the salaries of clerk and treasurer. Half the salaries of the medical officer of health and the inspector of nuisances will be paid out of the Imperial Exchequer if the Ministry of Health is allowed to supervise the appointments.

The councils determine their own method of procedure, which is inclined to differ according to the size of the district, especially as to committees. In small councils a committee is frequently composed of all the members. Minutes of all meetings, both of council and committees, must be kept, and the latter must be reconstituted every year.

§ 165. **The Powers of District Councils.**—Urban district councils are more important bodies than rural district councils, and have greater powers. This is especially the case in sanitary administration, education, allotments and the power of levying rates, while a further distinction arises from the fact that rural district councillors are also guardians while urban district councillors are not Very frequently, however, the Ministry of Health confers the powers of an urban district council on a rural district council either for the whole or for some part of its district The powers of district councils may be divided

into three classes, viz. sanitary and public health, highway and miscellaneous. For the due carrying out of all these duties district councils have the power of making bye-laws, but these require the confirmation of the Local Government Board and must comply with the requirements of the Acts under which they are made. The Ministry of Health issues model series of bye-laws, which are generally adopted.

§ 166. **Public Health Powers of District Councils.**—The Public Health Act of 1875 is the great code of sanitary legislation, but many Acts since that date have added to the powers of a district council. All sewers vest in the district council, and must be maintained by it in proper repair. It is generally responsible for the sewerage and drainage of its district, and can enforce the provision of proper sanitary accommodation. It may provide for the removal of house refuse and the cleaning and watering of streets, and must do so if required by the Local Government Board. District councils have extensive powers of providing a water supply. Urban councils alone are able to provide baths and wash-houses, while they are compelled to maintain the machinery necessary to ensure an efficient supply of water in case of fire. District councils may take proceedings to prevent the pollution of rivers and to close any well, etc., the water of which is injurious to health. For sewerage, water supply, and like matters several districts may be combined by Provisional Order of the Ministry of Health, which requires parliamentary confirmation. The councils also appoint local committees to administer the Maternity and Child Welfare Act, 1918.

District councils have extensive powers for the prevention of and control over illness and disease. In the first place each district is inspected by the inspectors of nuisances with a view to the discovery of nuisances which are

detrimental to the health, comfort and well-being of the community. If any such are found notice is given to the occupier of the premises, and if he refuses to do away with the nuisance he can be compelled to do so by the justices. Food exposed for sale can be condemned and destroyed if unfit for human consumption. Urban councils may provide slaughterhouses, and must register those existing. All councils have certain powers as to adulteration and dairy inspection.

Coming now to the actual dealing with disease, the occurrence of all infectious disease must be notified to the medical officer of health. Stringent powers are given to the councils to prevent the spread of infectious diseases. They can require premises to be disinfected and bedding burnt. In the case of an epidemic the Ministry of Health can require house-to-house visitation and the provision of medical aid, and, generally, can take measures to prevent the spread of the disease. Its orders are enforced by the district councils. These bodies may also provide hospitals, mortuaries and cemeteries.

§ 167. **Highway Powers of District Councils.**—The district councils are the highway authorities for their districts, and must keep all highways in repair except main roads, which are repairable by the county council. An urban council can also compel the latter body to hand over main roads in its district to its care within one year of their creation, and the county council may at its option hand over main roads in a rural district to the rural council; in both cases the county council must pay for the cost of repair. An urban council has power to compel the proper making up of any street in private hands. It may also provide for lighting its thoroughfares. District councils must protect all public rights of way. Urban councils have the power of constructing and working tramways, if

they can obtain a Provisional Order conferring the necessary authority from the Board of Trade and get it confirmed by Parliament. They can also purchase private undertakings of this character after twenty-one years. Both rural and urban councils may construct and work light railways, which are steam or electric tramways using the ordinary highways. The necessary authorisation must be obtained from the Light Railway Commissioners under the supervision of the Ministry of Transport.

§ 168. **Miscellaneous Powers of District Councils.**—Urban councils have powers for the demolition of insanitary areas and dwelling-houses, and may make schemes to replace them. Both urban and rural councils may provide dwellings for the working classes, and urban councils may also provide allotments. The powers of rural councils as to allotments have recently been transferred to the parish councils.

With the licence of the Board of Trade district councils may provide electricity. They must register common lodging-houses, and license pawnbrokers and hackney carriages. They are the authorities for fairs, infant life protection, canal boats, shop hours, notification of births, and factories and workshops. Urban councils may provide museums, gymnasiums, and public parks, clocks and libraries. If they have more than 20,000 inhabitants they are the authorities for elementary education and for old age pensions. They may also promote private bills in Parliament, and by this means the larger urban councils have obtained a number of miscellaneous special powers.

§ 169. **District Council Finance.**—Urban and rural district councils have different methods of raising the funds necessary to meet their expenditure. An urban council levies a general district rate on all property assessable for the relief of the poor, but it may divide the district into parts and make a separate assessment on

each part. In the case of improvements benefiting a few individuals, it may levy a private improvement rate on the persons benefited by which they will repay the expenditure with interest in a period of thirty years. In rural districts the council does not levy a rate, but its expenses are met out of a fund raised from the poor rate of the various parishes in the district. Its expenses are divided into general expenses and special expenses, the latter being those which specially benefit a particular area; these are borne by the separate areas interested. The rural council issues precepts to the various overseers to raise the necessary funds; this they do, paying the amount for general expenses out of the proceeds of the poor rate, and levying a separate rate for the special expenses. Besides the proceeds of the rates the income of a district council includes contributions from the Imperial Exchequer, which are paid through the county council, and certain receipts from fees and fines.

District councils may borrow money for permanent works with the consent of the Ministry of Health. The money is repayable by instalments extending over a maximum of sixty years (for housing eighty years). This power is largely resorted to.

The accounts of an urban council are made up annually, and those of a rural council half-yearly. They are subject to a searching audit by a district auditor in the same way that the accounts of a county council are.

§ 170. **The Working of Borough Councils.**—Although there is considerable diversity in the powers of different boroughs, there is an uniform method of administering their affairs. As with other local authorities there is the threefold combination of council, committees and staff. The council may appoint whatever committees it thinks necessary. Where a borough is the authority for police,

education, old age pensions, diseases of animals, or lunacy within its district, it must appoint committees for such of these purposes as it administers. These committees must be chosen from the actual members of the council and their acts must be submitted to it for approval. The committees on education and old age pensions are, however, exceptions to these rules: both must contain co-opted members, the education committee including women, while neither committee need submit its acts to the council. The council settles all its own procedure and the method in which the submission to itself of the proceedings of its committees is to be made.

The principal officer of the council is the Town Clerk. Although he can be dismissed at the pleasure of the council his office is usually a permanent one, and the experience he thus gains enables him to influence largely the course of administration in the borough and to preserve its continuity. He acts as secretary to the council, advises them on any legal points which arise and is the custodian of the borough records and documents. Besides the town clerk, the council must also appoint a treasurer and "such other officers as have been usually appointed in the borough or as the council thinks necessary." These will vary in accordance with the size and importance of the borough, but will always include a medical officer of health and an inspector of nuisances.

The council must hold four quarterly meetings during the year for general business, one being at noon on the ninth of November. The mayor presides, minutes are kept, and one-third of the whole council forms a quorum.

§ 171. **The Powers of the Borough Council.**—These vary widely in different boroughs, but all councils have the power to make bye-laws for the good rule and government of the borough. These must be submitted to the Ministry

of Health, or in some cases to the Home Secretary, and must also conform to certain other conditions. Every town council, again, is the urban district council for its borough, and controls and manages the municipal property. It may build a town hall and other necessary municipal buildings, and buy land to the extent of five acres. Unless empowered by some Act of Parliament, it may not sell or mortgage its property without the consent of the Treasury, and its powers of granting leases of such property are strictly limited.

If a borough is a county borough its council has nearly all the same powers as a county council, but it appoints the coroner only where his district lies wholly within the borough.

The councils of boroughs with 10,000 inhabitants or more are the authorities for elementary education unless this power has been surrendered to the county councils. They also act as a general rule in the administration of the Acts relating to the sale of food and drugs, the contagious diseases of animals, destructive insects, and weights and measures. Such boroughs control their own police if they had the requisite population in 1881; but new boroughs must possess 20,000 inhabitants to have this privilege, as also to be authorities for old age pensions. Boroughs with 50,000 inhabitants appoint representatives on local National Health Insurance Committees and can form local committees under the Naval and Military War Pensions' Acts 1915-7. They have distress committees and can use the produce of a halfpenny rate to relieve unemployment in certain ways. Those with 10,000 inhabitants can obtain this power with the consent of the Ministry of Health.

All borough councils can increase their powers by passing resolutions to put in force what are known as the adoptive Acts; these relate to light railways, public

libraries and shop hours, etc. They may promote private bills in Parliament, and thus acquire further powers.

§ 172. **Borough Finance.**—The income of a borough is paid into the borough fund. It is derived from fees, receipts from corporate property, the borough rate and contributions from the Exchequer. In the case of non-county boroughs the contributions from the Exchequer come through the county council, which has to pay half the cost of police pay and clothing where a separate police force is maintained, and also half the salaries of the medical officer of health and inspector of nuisances. If these boroughs increase the cost of their police force it leaves the county councils with so much the less for their own purposes, while in county boroughs this contribution to the cost of the police resolves itself into a mere matter of bookkeeping. A county borough must pay the total cost of its police from one source or another, and it makes no practical difference against which part of its income that expense is charged. The same remark may be made with regard to the county funds.

Every borough has the power of levying a borough rate, which is collected by the overseers for the various parishes within the borough. It has also the same powers as an urban district council of levying a general district rate and private improvement rates. Payments are made by the treasurer out of the borough fund upon an order of the council signed by three of its members and countersigned by the town clerk. Certain salaries are practically the only payments that may be made without such an order.

A borough council can borrow money for permanent improvements. This is repayable by instalments and charged on the rates. Generally the consent of some Government department is necessary for the purpose.

The provisions as to audit in a borough are not so

satisfactory as in other local areas. Instead of the Ministry of Health's audit the borough accounts are reviewed by the borough auditors. Two of these are elected by the burgesses and the third is nominated by the mayor from among the members of the council. None of these auditors need have any professional qualification for the office. The accounts are made up and audited every half-year, and a yearly return of receipts and expenditure is made to the Ministry of Health.

§ 173. **Parish Councils and Meetings** are the authorities for the parish. As a general rule their activity is not great, and this is largely due to the small amount which they can spend. The parish council may appoint committees and co-opt persons on them in the same way that a district council can. It may also appoint members to joint committees of itself and other parish or district councils. The parish meeting may appoint a committee to act for it subject to its approval in matters which it thinks are best conducted thus, and may also appoint persons to manage its allotments. The parish property is vested in the council, or, where there is no council, in the chairman of the parish meeting and the overseers.

These assemblies have taken over the former civil powers of the vestry and so they appoint the overseers. A parish council usually appoints a clerk and a treasurer from among its own members without salary. It may provide allotments, and on their acceptance by the parish meeting may administer the adoptive Acts for lighting and watching, baths and washhouses, burial grounds, public improvements, and lighting. It can provide parish offices and books, fire-engines, and recreation grounds. It can utilise wells and deal with ponds, etc., prejudicial to health. It may act as the parochial committee of a rural district council. It has certain powers as to non-ecclesiastical

parochial charities, and may, under certain restrictions, borrow from the county council to purchase land for authorised purposes, to carry out the adoptive Acts or for permanent works authorised by the county council and the Ministry of Health.

Both parish councils and parish meetings may complain to the county council of the neglect of a rural district council, and have extensive powers as to the maintenance of footpaths. They are also represented on Boards of managers for elementary schools. Where there is a parish council the duties of the parish meeting are mainly to act as a restraining force, as will be seen in the next paragraph.

§ 174. **Parish Finance.**—Parish councils and, where there is none, parish meetings may spend an amount equivalent to a rate of sixpence in the pound, but in the case of the former the consent of the parish meeting is necessary if the rate is above threepence in the pound. In the case of parish councils this is exclusive of the rates which may be raised under the adoptive Acts.

A parish council may only borrow up to half the assessable value of the parish and then only under severe restrictions. It must first get the consent of the parish meeting and the county council to the expenditure, and then the consent of the county council and the Ministry of Health to the loan.

The accounts of parish councils and meetings are made up and audited in the same way that those of district councils are, but in many cases no expenditure whatever is made, and in those cases where expenses are incurred the average revenue and expenditure are under thirty pounds.

§ 175. **The Working of the Board of Guardians.**—As with other local authorities there is the threefold combination of board, committees and staff. The chief committees are

the assessment committee, which must consist of from six to twelve persons, and the visiting committee. A district committee can be formed in any parish four miles away from the meeting place of the board, to consider applications for relief and report thereon to the board.

With some minor exceptions the sanction of the Ministry of Health is necessary to the appointment of the union officials and to the fixing of their salary. Once appointed, these can be dismissed only by the Ministry of Health, and they are thus free to carry out their duty fearlessly, knowing that the Board of Guardians cannot dismiss them.

The staff consists of a chief and other clerks, relieving officers, medical and vaccination officers, the workhouse staff, and the assistant overseers and rate collectors.

Unlike other authorities, a board of guardians may not determine its own procedure, but must act in accordance with the forms and methods laid down by the Ministry of Health. This body exercises by means of Orders what is practically legislative authority in the control of poor law administration. These Orders are either general or special, and may apply to all or one or more of the Boards as the Order specifies.

§ 176. **The Powers of the Board of Guardians.**—In administering poor relief the guardians are strictly bound by the various Orders of the Ministry of Health, whose inspectors have the right to attend their meetings. Their only freedom of action lies in deciding the nature of the relief to be granted in individual cases. Even here they are bound by one important limitation. They may not grant outdoor relief to able-bodied adults.

Poor relief is either outdoor or indoor. Outdoor relief may consist of money, gifts in kind such as food or clothing, medical assistance and burial in case of death. Indoor

relief is given in the workhouse, the infirmary, and the casual ward. Pauper lunatics are maintained in the county asylums. The relieving officer enquires into applications for relief, and has certain powers to order immediate relief in urgent cases. He attends the meetings of the guardians and carries out their instructions. If in need every person has a right to be taken into the workhouse of the union in which he is, until it can be shown that he is properly chargeable on another union. But outdoor relief cannot be demanded as a right.

Besides granting relief the board of guardians must see that the workhouse and infirmary are properly maintained. It is also the authority for the Vaccination Acts, the Infant Life Protection Act, and the registration of births, marriages, and deaths. It makes the valuation lists of the various parishes and collects the local rates through the overseers.

§ 177. **Poor-Law Finance.**—The following is the procedure in raising the poor rate. The overseers of the various parishes prepare a valuation list, *i.e.* "a statement of the gross estimated and rateable value of all the rateable property in the parish." These valuation lists are then revised by the assessment committee of the board of guardians. This committee has power to hear and determine objections to the valuation, subject to an appeal to quarter sessions. The valuation lists after being settled are the basis on which the poor rate and other rates are levied. The guardians determine how much must be raised from the poor rate. They then calculate how much each parish ought to contribute as its proportion to the total. The next step is to direct an order to the overseers of the parish to raise this amount. The overseers then calculate how much in the pound, according to the valuation lists already prepared, will provide this amount and any

other amount required by the other local authorities. This is the assessment. The rate is then 'allowed" by two justices, after which demand notes are issued and the amounts assessed are collected.

The guardians may borrow money with the consent of the Ministry of Health for any permanent object such as a new workhouse. Their accounts are subject to a half-yearly audit by Ministry of Health officials.

§ 178. **Metropolitan Authorities.**—The governing body of the Metropolis before 1889 was the Metropolitan Board of Works which had been formed in 1855. Its duties were transferred to the London County Council, and this accounts in some measure for the extra powers which that body possesses beyond those of other county councils. Another reason for its greater activity is to be found in the vast population of London, while until 1903 the London County Council alone among county councils had the right to propose private bills to Parliament, and thus acquire special powers of its own. It is noteworthy, however, as testifying to its importance, that any bill "promoted by the London County Council containing power to raise money by the creation of stock, or on loan," must be introduced as a public bill.

The Corporation of the City of London is only partially subject to the London County Council. It maintains its own police, has the monopoly of all markets within seven miles of the city boundary, and is the sanitary authority for the port of London. It also administers a large amount of corporation property, and maintains several bridges across the Thames.

The powers of the Metropolitan boroughs, which were created in 1900, are rather more restricted than those of boroughs generally. Thus, in financial matters, they are compelled to appoint a finance committee with similar

powers and duties to those of the finance committee of a county council. Their accounts are also subject to a Ministry of Health audit like those of the county councils. They have no power over the police force, and are not the education authorities for their respective areas. They are also subject to considerable control from the London County Council and the Ministry of Health. The council of each borough, however, acts as the overseers of the various parishes within the borough, and appoints the assessment committee of any poor-law union within its boundary. It appoints a distress committee and can relieve unemployment to the extent of a half-penny rate. It has the power to co-opt persons to its library committee.

The duty of the Metropolitan Water Board is to supply pure and wholesome water within the limits of supply laid down by the Act of 1902, which created it. It took over the undertakings of the various water companies previously supplying the Metropolis, and paid their shareholders with stock specially created for the purpose. It apportions its total expenses among the various local authorities within its area according to their rateable value, and directs precepts to them to raise the amounts thus required. This is raised as a water rate. Its accounts must be kept and audited in the same way as those of a county council.

The Metropolitan Asylums Board provides hospitals for infectious diseases and asylums for imbeciles.

The Port of London Authority has jurisdiction over the Thames from Teddington to Sheppey. It has acquired the powers of the Thames Conservancy over the above area, as well as the duties of the Watermen's Company as to the licensing of craft and lightermen, and the government, inspection, and control of the latter. It can charge dues on all goods imported or exported, but must give no preference.

CHAPTER XVII.

EDUCATION.

§ 179. **Historical.**—The activity of the State with regard to education, which is so marked a feature of the present day, is entirely a growth of the last century. Its first interference in the matter was in 1833, when it granted £20,000 for educational purposes. For purposes of administration this was divided between two societies which were then endeavouring to supply the educational needs of the country. The earlier and smaller society was founded by Joseph Lancaster in 1808, and received the name of "The British and Foreign School Society" in 1814. Its distinguishing feature consisted in the giving of Bible lessons without denominational teaching and the reception of children of all creeds. The other society was the outcome of the efforts of the Rev. Dr. Andrew Bell to counterbalance the influence of Lancaster and extend that of the Church of England. It was founded in 1811 and called "The National Society for Promoting the Education of the Poor in the Principles of the Established Church." It is more commonly known as "The National Society," and was an offshoot of the Society for Promoting Christian Knowledge, which was founded in 1698. The religious rivalry in education which was thus set up has continued down to the present day. From 1833 to 1870 the Government grants were gradually increased, but the voluntary principle remained intact. No State schools were set up.

The great Elementary Education Act of 1870 introduced by Mr. Forster is the foundation on which the present system is based. This Act recognised and aided the already existing voluntary schools, but as these were insufficient to provide for the needs of all the children, it directed that "there shall be provided for every school district a sufficient amount of accommodation in public elementary schools for all the children resident in that district, for whose elementary education efficient and suitable provision is not otherwise made." In other words, the State undertook the duty of seeing that every child could obtain a proper elementary education. For this purpose bodies elected *ad hoc* were created and were known as school boards.

In 1876 education was made compulsory, and it became the duty of every parent to see that his child received a proper elementary education. What is included in this term is now defined in a code issued by the Board of Education. The age of compulsory attendance for scholars was from five to fourteen. They might attend from three to sixteen, and on passing certain tests of efficiency might obtain partial or total exemption from school attendance after reaching the age of twelve, or eleven in agricultural districts.

In 1891 a further step was taken, and education was made free. Every school district was required to provide a sufficient number of free places for those requiring them.

§ 180. **The Position in 1902.**—Before the passing of the Elementary Education Act, 1902, there were two classes of elementary schools, the board schools and the voluntary schools. The board schools were maintained and controlled by the school boards, the voluntary schools by their managers. In the board schools religious teaching might

be given provided that it complied with the "Cowper-Temple" clause of the Education Act of 1870, that "no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school." In the voluntary schools was given such religious teaching as was laid down by the founders of the school. In both kinds of schools the religious instruction was subject to the "conscience clause," which permitted any parent to withdraw his child from the religious instruction where he had objections to it. All religious instruction had to be given at the beginning or end of school hours.

With regard to the cost of the education, both kinds of schools received contributions from the national funds. These grants were of a certain amount per child in average attendance, but the school had to attain a certain standard of efficiency. In some cases school fees were charged; where no fees were taken an extra grant of ten shillings a scholar was made. The remainder of the cost of education was defrayed in the case of board schools by a rate levied by the school board, and in the case of voluntary schools by voluntary contributions and the proceeds of any endowment. Under an Act of 1897 voluntary schools also received a grant-in-aid of five shillings per scholar in average attendance, and by another clause of the same Act, which extended a provision in the Act of 1870, special grants were made to school boards in needy districts. All schools were made subject to Government inspection as a condition of receiving any grant.

It will be seen, therefore, that the voluntary schools differed from the board schools in that, apart from the Government inspection, they were not subject to public control, while financially they were in a considerably worse position. As the standard of education rose the school boards were enabled to meet the extra cost in

the board schools by an increase in the rates, but the voluntary schools had to depend on further voluntary contributions. There is little wonder, therefore, that the financial strain was increasingly felt by the latter, and that while many board schools were maintained at a standard which considerably exceeded the minimum of efficiency required by the Government inspectors, most of the voluntary schools found considerable difficulty in attaining that necessary minimum. It was with a view, therefore, to relieve this financial need and to unify the standard of efficiency of the various schools that the Education Act of 1902 was passed.

§ 181. **The Education Act, 1902,** to a great extent assimilated voluntary schools to board schools. It also rechristened both classes, calling the former non-provided schools, and the latter provided schools. It abolished the old *ad hoc* authorities, and handed over their duties to certain of the existing local authorities. It co-ordinated elementary and secondary education. It determined the constitution of the body of managers of every elementary school, and provided for the representation of local authorities on such bodies. It placed the duty of maintenance of all schools, both provided and non-provided, on the local education authorities, but prevented any interference by them in the religious teaching given in non-provided schools. The system thus created, which was extended, with some modifications, to London in 1903, will be explained in the following paragraphs.

§ 182. **The Local Education Authorities.**—There are four classes of local education authorities for elementary education: county councils, the councils of county boroughs, the councils of other boroughs having a population of more than ten thousand inhabitants, and the councils of urban districts having a population of more than twenty thousand

inhabitants. The distinction as to population drawn between the last two of these classes seems a purely arbitrary one, but may, perhaps, be explained by the fact that in urban districts the population is likely to be more scattered than in boroughs. Both town councils and urban district councils may, however, surrender their powers to the county council, and the latter also has jurisdiction over all rural districts and over such boroughs and urban districts as do not possess the necessary numerical qualification.

For higher education the councils of counties and county boroughs are alone the authorities, but the councils of all other boroughs and urban districts may, to the extent of a penny rate, spend money in supplying or aiding the supply of such education. The London County Council is the sole education authority within the Metropolis.

§ 183. **The Education Committee.**—Every council which is a local education authority for elementary education must appoint an education committee. Except in the case of a county the majority of this committee must be members of and appointed by the council. Provision is also made for the appointment of women, and of "persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the council acts." These latter persons are usually appointed on the nomination or recommendation of bodies in the district concerned with education. Separate education committees may be appointed for different areas in a county, and joint committees may be formed by the combination of counties, boroughs and urban districts or parts thereof. The committee may appoint sub-committees consisting either wholly or partly of its own members.

All matters relating to the exercise of the powers of the council as to education are referred to this committee, with the usual exception against borrowing money or raising a

rate, but with these exceptions the council may delegate to the committee all its powers. The committee then reports to the council.

The Managers.—Each elementary school has a body of managers who generally supervise its working. The composition of this body varies according as the school is provided or non-provided. In a provided school four managers are appointed by the county council, and two by the council of the "minor local authority" in whose area the school is situated. In London, however, these proportions are reversed. Two-thirds of the managers are appointed by the council of the Metropolitan borough in which the school is situated, and one-third by the London County Council, while provision is made that at least one-third shall be women. The councils of boroughs and urban districts which are local education authorities may apparently act as their own managers if they think it desirable.

In non-provided schools provision is made for the appointment of four "foundation managers" under the provisions of the trust deed of the school. Two other managers are appointed by the local education authority where this is the council of a borough or urban district. But where the county council is the local education authority one manager is appointed by it and one by the "minor local authority." Provision is made for the grouping of several schools under one body of managers. The managers must hold a meeting at least once in every three months. Minutes must be kept, which are open to the inspection of the local education authority, and any two managers may convene a meeting.

§ 184. **The Working of the School.**—It is the duty of the local education authority to maintain and keep efficient its elementary schools. It must therefore furnish the

money for this purpose. In the case of provided schools it has complete control over the working, and the managers "deal with such matters relating to the management of the school, and subject to such conditions and restrictions, as the local education authority determine." With regard to religious teaching the position in such schools is exactly the same as it was in board schools before the passing of the Act of 1902.

For non-provided schools the arrangements are somewhat different. The local education authority maintains and keeps them efficient, but the managers have to keep them in repair except as to "fair wear and tear." The latter must be made good by the local education authority. The managers may use the school out of school hours, but must allow its use to the local education authority for educational purposes out of school hours three days a week if that body has no other suitable accommodation.

The teachers in such schools are appointed and dismissed by the managers, but the consent of the local education authority is necessary. Consent to an appointment can only be withheld on educational grounds, and consent to a dismissal is not required when that dismissal is made on religious grounds. The courts have declared that the teachers in these schools are the servants, not of the local education authority, but of the managers. The managers must dismiss a teacher if required to do so by the local education authority on educational grounds, and must obey its instructions with regard to the number and educational qualifications of the teachers employed.

The religious teaching given in a non-provided school must be in accordance with the provisions of the trust deed relating thereto, and must be conducted subject to the conscience clause previously mentioned.

The managers must "carry out any directions of the

local education authority as to the secular instruction to be given in the school." If the managers refuse to obey these directions, the local education authority can step in and carry them out. The local education authority must make bye-laws to enforce the attendance of children at school.

§ 185. **Education Finance.**—The money for the repair of non-provided schools must come either from endowments or private subscriptions. No rent is paid for them, although they are privately owned. Subject to this all public elementary schools, whether provided or non-provided, are now maintained out of the public money. The grants per child in average attendance are still made out of the Imperial Exchequer, but the former grant-in-aid to voluntary schools, and the extra grants made to school boards in needy districts, have been abolished; in their place has been substituted a sum of four shillings a scholar for every child, whether in provided or non-provided schools, together with an amount which, by a complicated system of calculation, is made to vary with the poverty of the districts. In this way the poorer districts receive greater help from the Imperial Exchequer than those which are richer. All these grants are distributed by the Board of Education, which, as will be remembered, has the general supervision and control of all educational matters. The remainder of the cost of elementary education is raised by the local education authority, by means of a rate which is apportioned among the various boroughs and parishes within its area and is levied as part of the poor rate.

§ 186. **Higher Education to 1918.**—The State made grants yearly to certain universities and colleges of university rank, but these were not of large amount. Since 1889 the councils of counties, boroughs and urban districts have been able to spend money for technical education, a term which, although it has received a very wide

interpretation, does not include all "secondary" education. In 1890 such councils were aided in supplying this technical education by a subvention from the State which was paid out of the proceeds of certain duties on intoxicants. Wales was in a rather better position. The councils of its counties and county boroughs have, since 1889, been able to contribute to secondary education, whether "technical" or not. Since 1902, however, the councils of all counties and county boroughs have had power to supply or aid the supply of all education other than elementary.

Elementary teachers are trained in training colleges. These have in the past been founded by private persons or bodies, but since 1902 they may also be supplied by local authorities having power to spend money on education other than elementary. Financial assistance is given by the State by means of scholarships to the teachers being trained, but this is dependent on the maintenance of efficiency as shown by Government inspection and examination.

Education other than elementary also included, prior to 1918, certain teaching in evening continuation schools and to those above a given age. Before 1902 the provision made for this kind of instruction by local education authorities had been held to be illegal on the ground of being outside the scope of elementary education.

§ 187. **The Education Act of 1918.**—The aim of this far-reaching measure is "the progressive development and comprehensive organisation of education." It seeks to establish a system of national education which shall embrace all educational activities. Only the main provisions of this important Act can be summarised here:—

(1) Local education authorities are required to submit schemes to the Board of Education showing the mode in which their duties and powers under the Education Acts are to be performed and exercised.

(2) They must adapt the teaching in the higher classes of public elementary schools to the requirements of older children, and must provide practical instruction and courses of advanced instruction, and arrange for the transfer of children to higher schools when advisable.

(3) No exemptions from attendance at school can be granted to any child between the ages of five and fourteen. Powers are also given to the local education authorities to make bye-laws to extend the school age to fifteen years.

(4) Local education authorities must provide part-time continuation schools for young persons under the age of sixteen, and, after seven years from the appointed day, for those under eighteen years. The minimum number of hours of attendance at such schools each year is fixed, in the former case at 280, in the latter at 320. This provision is subject to certain exemptions, chiefly relating to those young persons who are being otherwise educated. This section is the most important in the Act. The continuation schools will provide courses of study and instruction and of physical training, without payment of fees.

(5) No child under twelve years of age is to be employed, and no child between twelve and fourteen shall be employed for more than two hours on any Sunday or on any school day before the close of school hours on that day, or on any day before 6 A.M. or after 8 P.M. Employment of children in factories, workshops, mines and quarries is prohibited.

(6) Special schools are to be established for physically defective and epileptic children.

(7) Local education authorities are empowered voluntarily to form Joint Committees or Federations for carrying out work of common interest.

(8) They may prohibit or modify the conditions of

employment of a child if those conditions are deemed prejudicial to health or physical development.

(9) They are empowered to establish holiday and school camps, centres and equipment for physical training, playing fields, school baths and swimming baths, and other facilities for social and physical instruction for children and young persons, and persons over the age of eighteen attending educational institutions.

(10) By an act of 1907 local educational authorities were obliged to make provision for the medical inspection of children in elementary schools. By the 1918 act they must now provide medical inspection and treatment in secondary and other educational institutions, continuation schools, and schools provided by them.

(11) The local authorities are empowered to provide or aid the supply of nursery schools for children between the ages of two and five.

(12) They may make arrangements, including provision of board and lodging, for children otherwise unable to receive the benefit of efficient elementary education.

(13) They may aid teachers and students to carry on an investigation for the advancement of learning or research.

(14) There are various financial clauses attached to the act. The former limit on the amount to be raised by a County Council out of rates for the purpose of education other than elementary is done away with. No fees are to be charged in any public elementary school. The grants made to the local educational authorities by the Board of Education shall not be less than one-half of the net expenditure of the authority recognised by the Board.

PART VI.

IMPERIAL RELATIONS.

CHAPTER XVIII.

THE COLONIES.

§ 188. **The British Empire** at the present day is composed of territories in each of the five continents. Our present monarch is King not only of the "United Kingdom of Great Britain and Ireland," but also of the "British Dominions beyond the seas." He is also "Emperor of India." The Government of India will be dealt with in the next chapter, while the present one will be devoted to the "Dominions beyond the seas."

Strictly speaking, the term "colony" is applied to any part of the King's dominions except the United Kingdom, the adjacent islands, and British India. Among colonies there are several kinds, which may be classified as follows :—

(1) Colonies with representative and responsible governments, *e.g.* Canada, Union of South Africa.

(2) Colonies with representative governments, *e.g.* Bahamas, Barbados.

(3) Crown Colonies, *e.g.* Gibraltar, Malta.

(4) Protectorates, *e.g.* Egypt.

(5) Miscellaneous dependencies, *e.g.* the Sudan.

Each of these colonies has had its own history, but all of them fall under one or other of the three following heads:—

(1) Colonies acquired by discovery and settlement.

(2) Colonies acquired by conquest.

(3) Colonies acquired by cession from the original inhabitants or possessors.

(4) Colonies acquired by annexation.

The bonds which unite these heterogeneous territories are two in number. The first is allegiance to a common Sovereign. The second is common subjection to the sovereignty of the British Parliament.

§ 189. **The British Parliament** has a supreme legislative power over the affairs of the Empire. As was stated in the first chapter, no Act of the British Parliament can fetter in any way the discretion of its successors. In spite therefore of previous legislation, it can legislate for any colony on any subject. Thus it has passed legislation which binds the colonies with regard to extradition, copyright and merchant shipping. Again, in 1900 it passed an Act providing for the federation of the Australasian colonies in the Commonwealth of Australia and defining the Constitution of the latter. This Act took away certain powers which had been granted to the colonial legislatures, but it is important to note that it begins by reciting the fact that these colonies had "agreed to unite in an indissoluble Federal Commonwealth." In other words, although the Act was an Act of the British Parliament, and as such binding on the colonies concerned, yet the Act would not have been passed or introduced if it had not been well known beforehand that the colonies desired it. The principle becomes clearer still when the position of Western Australia is considered. At the passing of the Act this colony had not decided to join the federation, and the Act was accordingly worded in

such a way as to leave it open to Western Australia to join the other colonies or not as it desired. It will be remembered that the loss of the American colonies was due to the assertion of the supreme control of the British Parliament over colonial affairs. It is obvious therefore that in order to avoid friction it should be the policy of the home Government to interfere as little as possible in colonial matters by means of direct legislation. As a matter of fact the tendency is to confine such interference within the narrowest limits.

While, however, the British Parliament has a supreme control over colonial affairs by way of direct legislation which is rarely employed, colonial legislation, even in the self-governing colonies, is subject to a two-fold check.

§ 190. **Colonial Laws**, in the first place, must not be inconsistent with any Act of the British Parliament which applies to the colony in question. Suppose, for example, that the legislature of the Transvaal were to pass a law permitting slavery within the colony. This would be contrary to the Slave Trade Act of 1824, which made the slave trade illegal in the British Dominions. If this did happen the Transvaal enactment would be invalid, and the judges of all courts, not only in Great Britain, but also in the Transvaal itself, would have to decide any question that arose in accordance with the Act of 1824. Again, any statute passed by the British Parliament affecting a colony overrides any colonial law that may then be in existence. Suppose, for example, that the British Parliament were to pass a law enacting that a widow was always to take half of her deceased husband's property, and that this law was to apply to all parts of the Empire. In such a case the courts of all British colonies would have to administer estates on this principle and disregard any colonial laws conflicting with it. It should be noted,

however, that it is only the statute law of the British Parliament which binds a colony in this way. A colony is quite free to depart as widely as it likes from the common law of England.

§ 191. **The Veto of the Crown** is the second check on the law-making capacity of colonial legislatures. This veto is of a two-fold nature and is employed fairly frequently. In each colony there is a governor appointed by and representing the Crown. If a bill passes the legislative bodies of the colony the governor has the power either to give or to withhold his consent, or as a third alternative to reserve the bill for the consideration of the Crown. If he withholds his consent the bill is at an end. If, however, he reserves the bill for the consideration of the Crown, its fate will depend on whether the Crown assents or not. This practically means that the British Government, which advises the Crown, decides whether the bill is to become law or not. The Constitution of the Commonwealth of Australia lays down that such a bill will not become law unless the assent is given within one year. Some time limit is desirable in order to prevent the course of legislation from being prolonged indefinitely.

If, however, the governor has assented to a bill it may still be set aside, as the Crown, acting on the advice of the home Government, has a further power of veto and can override the decision of the governor. The bill may or may not have contained a clause suspending the operation of the statute until the signification of the royal assent. If it does not contain such a clause it comes into force directly the governor's assent is given, but is subject to the risk of the veto of the Crown being subsequently exercised. If this happens it ceases to be law. If there is a clause suspending its operation until the royal assent is given it will never come into force unless that royal assent is

given. As a general rule the disallowance of a bill to which the governor's assent has been given must be made within two years; but in the Commonwealth of Australia, and in the Union of South Africa, the period within which such disallowance may take place is limited to only one year.

These Constitutions also confer a further power on the governor. He may return a bill which has been presented to him for assent by the legislative bodies of the colony together with any amendments he may recommend. These amendments are then considered by the legislative chambers.

The methods in which the Crown, or its representative, the colonial governor, can exercise control over colonial legislation may therefore be summarised under the following four heads :—

(1) The governor may remit the bill with amendments.

(2) The governor may refuse assent to the bill.

(3) The governor may reserve the bill for the consideration of the home authorities.

(4) The Crown may veto a bill which has received the governor's sanction.

§ 192. **The British Control over Colonial Legislation.**— It might be thought from the preceding paragraph that a colonial governor is entrusted with a somewhat arbitrary power. He is, however, limited by express instructions laid down by the Colonial Office. At the present time the facilities of telegraphic communication enable him without delay to consult the home authorities on any point of difficulty and to receive their instructions at once.

As a general rule colonial legislation is interfered with as little as possible. The powers of the Crown are, however, used to prevent any conflict with the legislation of the British Parliament, and also to prevent any colony

from adopting a policy which the home Government considers to be detrimental to imperial interests. Clause 64 of the South Africa Act 1909 reads as follows: "When a Bill is presented to the Governor-General for the King's Assent he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King, that he assents in the King's name, or that he withholds assent, or that he reserves the Bill for the signification of the King's pleasure. All Bills repealing or amending this section . . . and all Bills abolishing provincial councils or abridging the powers conferred on provincial councils under Section 85, otherwise than in accordance with the provisions of that section, shall be so reserved. The Governor-General may return to the House in which it originated any Bill so presented to him, and may transmit therewith any amendments which he may recommend." It will be seen therefore that in using his power of assent a governor has only a limited discretion; he must always act in accordance with any orders he may have received from the home Government. As he is in close touch with the parliamentary leaders in the colony and can inform them of the probable action of the Crown with regard to any proposed legislation, he exerts a great deal of influence over them in preventing the introduction of measures which it would be necessary to disallow if passed.

§ 193. **The legislative power of the Crown in Council** is confined to colonies which do not possess a representative legislature. This power has always obtained with regard to colonies acquired by conquest or cession, but until 1887 there was considerable doubt as to the exact powers of the Crown in colonies which have been acquired by settlement. The British Settlements Act of that year, however, gave full power to the Crown in Council to establish such laws,

constitute such courts and make such regulations for the administration of justice as were necessary for peace, order, and good government in any British settlement. The latter term is defined as a British possession not acquired by conquest or cession. The Act further provides that these powers may be delegated to any three or more persons in the settlement itself. In such a case these persons will have a jurisdiction concurrent with that of the Crown in Council.

It has been decided that, once the Crown has granted to a colony the right to legislate for itself in a representative assembly, it loses its own power of legislation for ever.

§ 194. **Colonial Law Courts.**—These administer the laws of the colony and also, where they apply, the laws of the British Parliament. If it is suggested that any colonial law conflicts with an imperial statute it is the duty of the court to determine whether this is the case. In this respect colonial laws are different from those of the British Parliament, and the distinction is due to the subordinate character of a colonial legislature. Its statutes are valid only if they comply with certain rules. Whether they do or do not comply with those rules has to be decided by the courts. British statutes, on the other hand, are absolutely binding directly they are passed.

The courts themselves are created either by the Crown in Council in accordance with the powers mentioned in the last paragraph, or, in cases where the colony has a legislature of its own, by such legislature.

There is a right of appeal from colonial courts to the Judicial Committee of the Privy Council. As a general rule this appeal is allowed only from the highest colonial court, so that a suitor must first carry his case through the various courts of his own colony and exhaust the possibilities of getting the decision reversed there before he brings it

before the English tribunal. The history and functions of the Judicial Committee have been dealt with in the chapter relating to the History of the Judiciary.

Suitors from the highest court of the various colonies composing Canada and Australia have a choice of appeal. They may either appeal direct to the Judicial Committee of the Privy Council, or go to the Court of the Dominion or Commonwealth, as the case may be. If they go to the latter there is no further appeal, unless special leave is granted either by the Dominion or Commonwealth court or by the Judicial Committee itself. This will only be done where the case is of public importance or of a very substantial character. It may be added that in certain cases touching the constitution of the Commonwealth the right of the Judicial Committee to grant special leave to appeal has been waived. In the Union of South Africa there is no appeal to the Judicial Committee without its special leave.

§ 195. **The Secretary of State for the Colonies** is the official channel of communication between the home Government and the various colonial administrations. The Privy Council, the Board of Trade and Plantations and the Home Office have all at various times been concerned with the administration of the colonies. In 1801 the third Secretary of State, who had been created in 1794, was appointed Secretary of State for War and the Colonies. His duties as to war were taken away at the time of the Crimean war, and this left the office as it is to-day, except that its work has largely increased. The Colonial Secretary is assisted by one Parliamentary Under-Secretary, one Permanent and four assistant Under-Secretaries, and a large staff. Formerly the work of the Colonial Office was arranged on geographical lines, but in 1907 it was entirely reorganised. There are now three main departments. The Dominions

Department deals with all matters relating to the self-governing colonies and has attached to it the secretariat of the Imperial Conference. The Colonial or Crown Colonies Department deals with the administrative and political work of the Crown Colonies and Protectorates. The General Department deals with legal business and general routine and various matters common to all Crown Colonies. It has four standing committees for Patronage, Railways and Finance, Concessions and Pensions respectively.

Colonial Governors are appointed on the recommendation of the Colonial Secretary and receive their instructions from him. All laws passed by colonial legislatures come before him, and it is his duty to advise the Crown to disallow them or not in accordance with the principles which have already been considered. He has also considerable executive power over Crown Colonies. This will be dealt with in a later paragraph.

The Colonial Secretary determines the policy of the home Government with regard to the various colonies and the matters which arise in colonial administration. The visit of Mr. Joseph Chamberlain to South Africa, and that of Mr. Winston Churchill to East Africa and Uganda are examples of the modern desire to obtain first-hand knowledge of colonial problems and show the importance which is attached to their correct solution.

Another duty of the Colonial Secretary is to convene the Colonial Conferences which are held from time to time and to act as chairman. The Emigrants' Information Office is also a branch of Colonial Office activity. This collects and distributes information on the prospects of emigration in the various colonies and answers personal enquiries.

§ 196. **The Treaty-making power.**—The Crown has power to make treaties binding on the colonies, and no colony can negotiate with a foreign country without express

authority from the British Parliament. The colonies are, however, consulted in all treaties affecting their interests and are allowed to negotiate commercial treaties with a free hand. A new and probably extremely important precedent was taken at Versailles in 1919, when the treaty of peace with Germany was signed by representatives of Canada, Australia, New Zealand, South Africa, and India. The situation is not clearly defined, but the step would seem to imply a greater co-operation between the Imperial and Colonial Governments in the future.

§ 197. **Agents-General and Crown Agents.**—Most of the self-governing colonies maintain a representative in London to look after their interests. These representatives are known as Agents-General. The style of High Commissioner is, however, given to the representatives of the Dominion of Canada and of New Zealand. The duties of the Agents-General are mainly commercial. They press the claims of colonial produce on British consumers, circulate information as to emigration, and generally look after the interests of the colony they represent in such matters as rates of freight and cabling and shipping arrangements. They are paid by the colonies and not by the home Government. Canada also maintains commercial agents in certain large towns, British, colonial, and foreign, such as Liverpool, Dublin, Sydney, Capetown, Antwerp, and Paris.

For those self-governing colonies, like Newfoundland, which do not maintain an Agent-General, and for colonies of other kinds, similar duties are performed by the Crown Agents for the Colonies. These are three in number, appointed by the Colonial Secretary, and subject to his supervision. Broadly speaking they carry out the business of such colonies in Great Britain. They are paid out of a fund contributed to by the various colonial administrations which they represent.

§ 198. **Imperial Conferences.**—Advantage was taken of the presence in London of representatives of the self-governing colonies at the celebration of the Jubilee of Queen Victoria to hold conferences between these representatives and the home Government on colonial matters. Similar conferences were held in 1897, 1902, 1907, and 1911, and in 1907 the title of "Colonial" Conference was changed to Imperial Conference. These conferences were merely deliberative, and the execution of the suggestions made was left for the governments themselves. At the earlier meetings the Colonial Secretary presided, but with the change of title additional importance was given by the assumption of the Presidency by the Premier of the United Kingdom. As constituted at present the Conferences include the Imperial Prime Minister, the Colonial Secretary, who acts as Chairman in the absence of the President, the Prime Ministers and other Ministers of Canada, Australia, New Zealand, South Africa, and Newfoundland, the Secretary of State for India and other representatives of India. In 1907 it was decided to establish a permanent Secretariat to deal with conference matters, and to keep the various colonies informed thereon.

The importance of these Conferences has grown steadily ever since their inception; they now form an integral part of Imperial administration and a stepping-stone to greater co-operation and organisation in the future. The movement received considerable impetus during the European War. In 1917 the Prime Ministers of the Dominions were invited to attend a series of special meetings at the "War Cabinet" in order to discuss war problems; India was also asked to send representatives. The sessions of the Cabinet thus enlarged were known as the Imperial War Cabinet. So successful did the experiment prove that in 1918 it was decided that there ought to be regular meetings of the

Imperial Cabinet, and the Dominions were invited to nominate visiting or resident Ministers in London to attend meetings other than those attended by the Prime Ministers.

§ 199. **The Self-governing Colonies** comprise Canada, Australia, New Zealand, Newfoundland, and the Union of South Africa. The first two and the last of these are federations of individual colonies which are themselves self-governing but subordinate.

The legislature of a self-governing colony consists usually of a Senate and a House of Representatives, corresponding roughly to our Lords and Commons. Methods of selecting members for the Senate vary appreciably. Thus in the Union of South Africa the Senate is composed of eight members elected by the legislatures of each province, and of eight members nominated for ten years by the Governor-General. The Senate of the Federal Parliament of the Dominion of Canada consists of members nominated for life. In the Commonwealth of Australia the Senate consists of six representatives from each of the States composing the Commonwealth, who are directly elected for a term of six years. The House of Representatives in each colony is an elected house, though the franchise qualifications and the duration of Parliament vary with the different colonies.

The executive authority in all colonies, as in Great Britain, is vested in the Crown. It is exercised by the governor on the advice of an executive council composed of the colonial Ministers of State. These are in a similar constitutional position to Ministers in Great Britain and are the leaders of the party in power in the legislative assembly. The governor must act on their advice in the same way that the Crown acts on the advice of its Ministers at home, except where Imperial interests are involved. The governor, however, exercises considerable influence, and can, by

dissolving the legislature, appeal to the electorate to determine whether it supports the party in power.

The Act of Parliament creating the Dominion of Canada lays down that its government is to be "similar in principle to that of the United Kingdom." This short phrase admirably summarises the constitutional position of the self-governing colonies.

§ 200. **Federated Colonies.**—These are Canada, Australia, and South Africa. The Dominion of Canada was proclaimed in 1867, the Commonwealth of Australia in 1900, and the Union of South Africa in 1909.

In these federations the constituent colonies retain to a large extent the constitutional position and powers they possessed before federation, but are subordinate to the federation in matters relating to the colonies as a whole. In Canada certain matters are assigned exclusively to the provincial legislatures, while all other matters may be dealt with by the Dominion legislature. In Australia, on the other hand, the position is reversed, and it is the province of the Commonwealth Parliament that is defined. The Commonwealth courts have to determine all constitutional questions and conflicts between the laws of the various states and those of the Commonwealth itself. The Commonwealth may not prefer one state to another in any way, and an Inter-State Commission has been set up to execute and maintain the provisions of the constitution as to trade and commerce. This acts as a judicial body to which disputes between the various States and the Commonwealth on these points may be referred.

There are no provisions in the British North America Act enabling the Federal Parliament to alter the constitution. Consequently this can be effected, if the need arises, only by Imperial statute. Similarly the South Africa Act does not provide for any alteration of the constitution.

In the Commonwealth of Australia Act, 1900, it is enacted that to amend the constitution a bill with this object in view must pass both Houses of Parliament by an absolute majority. It must further be submitted to a referendum and secure a majority of all the electors of the Commonwealth and a majority of electors in a majority of States. The constitution of the Commonwealth of Australia is thus an excellent instance of a rigid constitution.

§ 201. **Crown Colonies** may be divided into those which have representative government and those which have not. The latter class may again be divided according to whether the executive and legislative functions are vested in the governor alone or in nominated bodies.

In colonies with representative government the upper house (if any) of the legislature is always nominated, while the lower is wholly or in part elected by the inhabitants of the colony themselves. If there is only one house it always contains some nominated members. The executive is in the hands of the governor assisted by a nominated executive council. The Bahamas, Barbados, and Malta are types of this kind of colony. Southern Rhodesia, which forms part of the territory controlled by the British South Africa Company, also possesses representative institutions.

The constitutions of colonies which have nominated executive and legislative councils are created by letters patent. The details of a constitution are given in the "Instructions" which are issued to the governor, and while these are in force they form part of the rules governing the constitution of the colony. The Instructions usually provide for the composition and working of the two councils and the general details of the government of the colony. They also enumerate the classes of bills which the governor must reserve for the royal pleasure. Among

colonies of this class may be mentioned the Straits Settlements, Trinidad, Hong-Kong and the various West African colonies.

Gibraltar, Ascension, and St. Helena are examples of colonies which have neither legislative nor executive councils, but are governed by a governor alone. The reason for this form of government is usually either military necessity, as in Gibraltar, or else the wild and uncivilised character of the country. Thus Swaziland is controlled by the High Commissioner for South Africa, while the Cook's Islands in the Pacific are governed by a Resident appointed by New Zealand.

In all these Crown colonies there is considerably more interference by the home Government than is the case in the self-governing colonies. The "Instructions" to the governor are of a fuller nature, and he constantly receives directions from home as to his actions. The chief executive matters thus dealt with are questions as to currency, banking, posts and telegraphs, education, medical and sanitary requirements, pensions and patronage.

§ 202. **Protectorates.**—It is difficult to define exactly what a protectorate is. The term is used to cover a class of relations between civilised and uncivilised countries in which the protecting state has not assumed full sovereignty over the territory protected, but at the same time claims an exclusive right of jurisdiction over it as against other nations. It is, however, only a transitional relationship, and it almost invariably tends to ripen into effective sovereignty by means of annexation.

The reasons which induce the assumption of protectorates may be roughly classed under two great heads—political and humanitarian. A state may be forced to act by the knowledge that if it does not do so some other state will step in and annex the territory or proclaim a protectorate

over it. It was this rivalry which caused what is known as the scramble for Africa in the eighties of the last century. Again, outside its own territory a state has no jurisdiction over persons other than its own subjects, and its efforts in ameliorating native conditions may be frustrated by acts which it is powerless to prevent unless it proclaims a protectorate, and so acquires the power to deal with all persons within the protected zone. Many of the protectorates in the Pacific were thus forced upon Great Britain in order, as it was said, to protect the blacks from the whites, and the whites from the blacks.

The degree of control exercised in protectorates varies greatly. In some it is merely nominal, in others it has practically the same effect as annexation. The control is usually entrusted to a Resident or Commissioner responsible to and under the orders of the Colonial Secretary, but in some cases this officer is appointed by one of the self-governing colonies, and the territory protected forms part of its dominions.

The principal protectorates at the present time are the Bechuanaland, Central Africa, East Africa, Uganda, Zanzibar and Somaliland protectorates in East and Central Africa, the Northern and Southern Nigerian protectorates and those depending on Sierra Leone and Gambia in Western Africa, and the Brunei, Sarawak and Tonga protectorates in Australasia. The territory of Papua in New Guinea is a protectorate administered by the Commonwealth of Australia.

§ 203. **Chartered Companies.**—The last quarter of the nineteenth century saw the rise of the modern chartered companies. These bear some analogy to the old trading companies of Elizabeth's time, but also show marked differences in that they have no monopoly of trade, and their work is to a large extent political. The principal

companies founded were the British South Africa Company, the Royal Niger Company, the Imperial British East Africa Company and the British North Borneo Company.

The procedure is as follows. The Crown grants a charter to the company authorising it to develop certain defined districts, and delegating to it certain governmental powers. With regard to these latter powers the company is absolutely under the control of its home government. The British South Africa Company, for example, has power to make ordinances, but these must be approved by the Colonial Secretary. It may also establish and maintain a force of police, but all relations between the company and the natives are subject to the supervision of the Secretary of State. The power of revoking the charter at any time, if the company does not fulfil its obligations, is also reserved to the British Government. In the case of the Imperial British East Africa Company, and also in that of the Royal Niger Company this power has been acted upon, but the latter company continues as a trading concern.

These companies do the pioneer work of colonisation. They are able to secure territory for the British Empire when political exigencies prevent the Government itself from acting; in this way private enterprise is enlisted in the development of uncivilised countries. The territory under their sway is very much in the same position as a declared protectorate, and always tends to become so by direct Government intervention. It is so far regarded as British that no interference by a foreign state is allowed.

As a general rule the working of such companies has not been a financial success, but it has had a civilising influence, and has usually benefited both the mother country and the territory administered.

§ 204. **Spheres of Influence.**—When one state has agreed with another that the latter shall have the exclusive or

prior right of developing and exploiting a certain area, the territory within that area is frequently called a sphere of influence of the latter power. Such an agreement gives no rights of sovereignty and imposes no very definite duties, but in general the state interested acts as a restraining and directing force on the governing authority, if any, of the territory in question. Powers which are not parties would not be bound by agreements of this sort, but any interference by a state within the sphere of influence of another would be regarded as an unfriendly act.

The creation of a sphere of influence is in some cases the first step to the establishment of a protectorate, but its main object under the present conditions of world-wide trade competition is to assure an open or exclusive market for the state which creates the sphere. A recent example of the creation of this class of interests is given by the agreement of Great Britain with Russia as to Persia.

§ 205. **Sub-Colonies.**—Some colonies are not directly administered from Great Britain, but are placed under the control of a colony of a higher grade. The latter colony is responsible to the home Government for its government of the former, but the principles of administration undergo no change. Thus Papua is administered from Australia, and the Cooks, Auckland and Chatham Islands from New Zealand. The Straits Settlements control Labuan, while the Cocos Islands and Christmas Island now form part of Singapore, and Tobago part of Trinidad. Mauritius, the Seychelles and Jamaica have all got various small dependencies, while Aden and Perim are subject to the Presidency of Bombay.

§ 206. **Miscellaneous Rights of Empire.**—Prior to 1914 Egypt and Cyprus were technically parts of the dominion of the Sultan of Turkey. In that year the United Kingdom and Turkey were at war. In consequence of the ad-

herence of the then Khedive to the Sultan's cause Egypt was declared a British protectorate, the Khedive was deposed and the eldest living prince of the family of Mehemet Ali was placed on the vacant throne with the title of "Sultan of Egypt." The legislative authority is vested in a Council of Ministers in which the Sultan and the British High Commissioner occupy seats. Naturally the counsel and advice of the British High Commissioner have very great influence and are usually followed. The form that the constitution of Egypt will ultimately take is still a matter of uncertainty.

The Soudan is a kind of dependency of Egypt. It was originally a tributary province, but was conquered by the Mahdists, and has only been reconquered in recent years. It is subject to the joint dominion of Great Britain and Egypt, so that Great Britain has really got greater rights here than in Egypt itself. What those rights are, however, is a puzzle even to international jurists. The object of the joint dominion was undoubtedly to prevent other nations from exercising the same rights, especially as to judicial matters, which they have in Egypt. These would have extended to the Soudan if it had been under the sole sovereignty of Egypt. Its administration is wholly in the hands of officers appointed by Great Britain. The Governor-General is now assisted in the discharge of the executive and legislative powers by a Council.

In the New Hebrides an Anglo-French Convention of 1906 has created a kind of joint sovereignty of Great Britain and France.

Cyprus was formerly occupied by Great Britain under the Convention with Turkey of 1878. By the terms of that convention an annual tribute of £92,800 was payable to the Sultan, but on the outbreak of war with Turkey in 1914 the island was formally annexed by proclamation.

The island is administered by a High Commissioner with a nominated Executive Council and a Legislative Council that is mainly elected.

Wei-hai-Wei was leased to Great Britain from China by a convention signed in 1898. Originally it was acquired for the same duration as the Russian occupation of Port Arthur. Although the Japanese have now conquered the latter place, they are considered to be merely continuing the Russian occupation, and, therefore, the lease of Wei-hai-Wei will determine only when Port Arthur returns to Chinese sovereignty. Wei-hai-Wei may perhaps rightly be regarded as British territory subject to the superior rights of China. It is now under the control of the Colonial Office, and the administration is entrusted to a Commissioner.

CHAPTER XIX.

INDIA.

§ 207. **Historical.**—On the last day of the year 1600 Queen Elizabeth granted a charter to the East India Company giving it the exclusive right of trading in all parts "of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza [Good Hope] to the Streights of Magellan." It is to the exertions of this company and the territorial rights which it acquired from the Great Mogul and other native Indian sovereigns that we owe the existence of the present Empire of India.

The company was an association of traders formed to compete with the Dutch in the trade to India. It had power to make regulations for the government of itself and its agents; and as its scope increased further powers of jurisdiction were given to it which formed the origin of the British administration of justice. Although its charter was renewed at various times it was not without rivals, and while its powers increased its subjection to the Crown became more complete. In 1709 after about twenty years of competition it was united with a new company which had sprung up.

Although it was founded for trading purposes it soon acquired certain posts on or near the coast of India. Bombay was handed over to it by Charles II. in 1669, and in 1683 it was given full powers of making war and raising military forces, but subject to the interposition of the royal authority. In the years preceding and following the middle

of the eighteenth century constant wars were engaged in. The victories of Plassey (1757) and Baxar (1764) made the company the masters of a large tract of Indian territory and by 1765 it may be said that it had grown into a territorial sovereign. In the last-named year a grant was obtained from Shah Alam of the financial and military administration of Bengal, Behar and Orissa.

From this time forward the company gradually lost its trading rights and duties and became more and more subject to the interference of the Crown. It soon got into financial difficulties and had to invoke Government assistance. In 1773 the administration of its Indian possessions was placed under the control of a governor-general nominated by the Crown. The government of Bengal was also organised and a supreme Court of Justice was established at Calcutta. Warren Hastings was the first governor-general. Various parliamentary enquiries into Indian administration were held and Fox's famous East India Bill was the result. This was defeated in the House of Lords and after a dissolution Pitt with a parliamentary majority at his back passed the Act of 1784. This created the Board of Control, which consisted of the Chancellor of the Exchequer, a Secretary of State, and four other Privy Councillors. The Board had full powers of superintendence, direction and control over the affairs of the company. The latter had previously been administered by a Court of Directors, but now this Court became subject in all respects to the newly created Board although the former appointed the governor-general and other officials. This system remained in force with some modifications until 1858.

A large amount of further territory was annexed by Lord Wellesley when governor-general from 1798 to 1805. A searching parliamentary enquiry was again held as to

the Indian administration of the company, and in 1813 an Act was passed which reserved to the company the monopoly of the China trade and the tea trade, but threw open the rest of the export and import trade of India to British subjects. The monopoly reserved in 1813 was taken away in 1833 when the company was finally deprived of its commercial functions. Its administrative and political powers remained, but it was declared that the territorial possessions of the company were held "in trust for His Majesty, his heirs and successors, for the service of the Government of India." In India the inclusion of Lord Macaulay in the governor-general's council induced a large amount of legislative activity. In 1853 the right of patronage was taken away from the Court of Directors and the Indian civil service was thrown open to general competition.

In 1858, as a result of the Mutiny of the previous year, the work and property of the company was transferred to the Crown. A fifth Secretary of State was appointed to attend specially to Indian affairs; he was to be aided by a council and responsible to the Crown and to Parliament. This system still obtains.

Since 1858 the Sovereign has become Emperor, large accessions of territory in Burmah and on the North-Western frontier have been made, while the Straits Settlements have been separated from India and formed into a separate colony. The company was not formally dissolved until 1874.

§ 208. **The Secretary of State for India** is primarily responsible for the good government of India. His functions are defined by the Government of India Act 1858, which transferred the powers of the East India Company to the Crown. His position is somewhat different from that of the other Secretaries of State in that his powers are limited by the necessity of acting with the Council of India. He

presents annual accounts of revenue and expenditure to Parliament together with a statement exhibiting the moral and material progress of British India and the conditions in the various provinces. He is assisted by a Permanent and a Parliamentary Under-Secretary and a large staff. He makes appointments and promotions.

India comprises British India and the Native States. The former is British territory, the latter technically is not. The forms of government in the two are also essentially different. The following five paragraphs apply solely to British India, and show the conditions existing until the Government of India Act, 1919, is in full working order.

§ 209. **The Council of India** is appointed by the Secretary of State. It consists of from ten to fourteen members, but can act in spite of a vacancy having occurred. The members hold office for seven years and may be reappointed, for special reasons to be laid before Parliament, for a further period of five years. Nine at least of the members must be qualified by having served or resided in British India for at least ten years and not having left India more than five years before appointment. A member cannot sit or vote in Parliament, but he may resign his position at any time. Five members constitute a quorum, and the Secretary of State acts as President. The Council must meet at least once a week, and may be convened oftener if the Secretary of State so directs. For the more convenient discharge of business it is divided into a number of committees, viz. Finance, Political, Military, Revenue and Statistics, Public Works, Stores and Judicial and Public.

§ 210. **Powers of the Secretary and Council of India.**—For certain matters a majority of votes of the Council is necessary. These include the granting or appropriation of

Indian revenues or property, the exercise of borrowing powers, the sale or mortgage of property, the alteration of salaries or furlough and the making of regulations for Indian appointments. All other matters which come before the Council of India may be determined by the Secretary of State, but if he acts against the votes of the majority he must record his reasons. Any member may require his opinion and the reasons for it to be recorded.

Almost everything of importance relating to the good government of India must be done by the Secretary of State in Council. In particular all orders and despatches sent to India, and all orders made in the United Kingdom as to the government of India, must be signed by the Secretary of State and submitted to the Council. These provisions do not apply to urgent or secret orders. The latter are such as relate to the making of war or peace, the conduct of negotiations or the policy to be pursued with regard to a prince or state.

An order to commence hostilities in India must be communicated to Parliament, and its consent is necessary for defraying out of the Indian revenues the expenses of military operations beyond the external frontiers of India, unless such operations are necessary to repel actual invasion or for some other urgent reason.

§ 211. **The Governor-General of India**, or Viceroy, as he is popularly called, is appointed by the Crown for a period of five years. He acts with a council for both executive and legislative purposes, but must obey all orders of the Secretary of State. This council, it should be noted, is entirely different from the Council of India, referred to above. Sir Courtenay Ilbert defines the powers of the Viceroy by saying that "the superintendence, direction and control of the civil and military government of British India is vested in the Governor-General of India in Council."

§ 212. **The Indian Executive and Legislature.**—The council consists of six members, of whom three must have been in the service of the Crown in India for ten years, while one must have certain legal qualifications. The commander-in-chief is usually appointed as an extraordinary member of the council. The governor-general and one ordinary member form a quorum. The governor-general must sign all orders of the council: he has a casting vote, but is bound by the majority of votes unless he is of opinion that the safety, tranquillity or interests of any part of British India are essentially affected by the proposed measure.

Except in the case of hostilities either actually commenced or being prepared against the government of India, war cannot be declared without the express command of the Secretary of State.

The administrative work is done by the various departments of government, which are presided over by the members of the council just as the great departments of state in Great Britain are presided over by Cabinet Ministers. The council practically becomes a kind of Cabinet for the discussion of general policy.

By the terms of the Indian Councils Act, 1909, the Council is expanded into an Imperial Council of 68 members, of whom 36 are nominated and 32 elected by various native and commercial interests. No person is eligible if the Government is of opinion that his election would be contrary to public interest. The Council has full powers of legislation for British India, but cannot override an Act of the British Parliament. The governor-general has a discretionary power, similar to that of colonial governors, of assenting to legislation; and like them he may reserve a bill for the assent of the Crown, in which case it only becomes law if the assent of the latter is given. He may in cases of

emergency make ordinances for the peace and good government of any part of British India to last for six months. For certain districts which are not so advanced as others he also has the power of making regulations.

The sanction of the governor-general is necessary for the introduction of measures relating to finance, religion, defence or external relations.

§ 213. **Local Indian Administration.**—For purposes of administration British India is divided into a number of provinces or districts under a governor, lieutenant-governor or chief commissioner. The governors of Bombay and Madras are assisted by councils, and have somewhat larger powers than are given in other districts. Local legislatures are also formed, but their powers are limited by the fact that they cannot deal with a number of matters without the sanction of the governor-general. His assent is also required to all their enactments.

A power to alter the boundaries of provinces is vested in the Governor-General in Council, but any particular alteration may be disallowed by the Secretary of State.

§ 214. **The Native States** comprise the "territories of any prince or chief under the suzerainty of His Majesty, exercised through the Governor-General of India or through" some officer subordinate to him. These are not technically British territory, but as the external relations of all of them are controlled by Great Britain, and as other nations hold her responsible for the maintenance of order and the protection of foreigners within their borders, they should be considered as part of the British possessions. The amount of internal interference varies greatly; control is usually exercised by a British Resident appointed by the governor-general. In some states practically the whole administration has been taken over, while in others the only jurisdiction exercised is that over British subjects.

The position usually depends on some treaty or engagement made with the native prince.

The sovereign authority of Great Britain over these states is exercised by the Governor-General in Council. He has apparently legislative powers over all persons, whether British, foreign or native, within these states, and can make treaties and conventions with their rulers and with the rulers of adjoining states such as Afghanistan.

It may be noted that the Federated Malay States are in a position similar to that of the native States of India.

Of territories outside India, Aden and Perim are administered from Bombay and form part of "British India." Baluchistan and Sikkim are protectorates subject to the Indian Government, and the Andaman and Nicobar Islands are governed by a chief commissioner. The interests of Great Britain in the Persian Gulf are attended to by a Political Resident.

§ 215. **The Government of India Act 1919.**—This epoch-making measure in the history of India is the outcome of the extensive agitation among the more educated natives for some degree at least of self-government. It is based largely on the Montagu-Chelmsford report of 1918. The purpose of the Act is to provide for the progressive realisation of responsible government, and to create an India that will be a union of great self-governing communities.

The Act proposes to apply to practical conditions the following propositions:—(1) as far as possible to establish complete popular control in local bodies and the largest possible independence of outside control; (2) to give the Provinces the largest measure of independence of the Government of India compatible with the discharge by the latter of its own responsibilities; (3) to maintain the authority of the Government of India as indisputable in essential matters, pending experience of the effect of the

changes; (4) to relax considerably the control of Parliament and the Secretary of State. Thus these proposals aim at affording the people of India a fair share in central government, while providing in the provinces the means for their attaining responsible government.

Only the more important provisions of the Act can be indicated here, and it must be remembered that a considerable degree of freedom in applying them to local conditions is secured by the Act itself. As the Act is not yet in working order it is difficult to state in precise terms what the actual arrangements will be. The following are the main changes:—

(1) **Parliament and the India Office.** The salary of the Secretary of State for India and the expenses of his department are to be placed on the Home Estimates, instead of being paid out of the revenue of India. The Council of India is to consist of from eight to twelve members, and, instead of nine as formerly, at least half of the members must have served or resided in British India for at least ten years. Five years is substituted for seven as the term of office for members of the Council. Instead of meeting once a week, it need now only meet once a month, and the former provision prescribing a quorum is abolished, and the Secretary empowered to provide for a quorum.

The control of the Secretary of State in Council is to be relaxed. The Secretary is empowered to regulate and restrict the exercise of the powers of superintendence, direction and control vested in the Secretary and the Secretary in Council, in such manner as may appear necessary to give effect to the purpose of the act, subject to the approval of Parliament. The King may appoint a High Commissioner for India in the United Kingdom, and delegate to him any of the powers previously exercised by

the Secretary or the Secretary in Council in regard to the making of contracts, and may prescribe the conditions under which he shall act on behalf of the Governor-General on any local government.

(2) **The Government of India.** This is to preserve indisputable authority in essential matters. The native element in the Governor-General's executive council is to be largely increased. The statutory maximum and qualifications for seats are abolished. Members are to sit for ten years, instead of five. The Governor-General is empowered to appoint from among the members of the legislative assembly a number of secretaries to assist members of the executive council, *i.e.* to hold positions analogous to our parliamentary under-secretaries.

The Legislature is to consist of two chambers. The Council of State, or Upper House, is to comprise not more than sixty members, of whom not more than one-third are to be official members. The Legislative Assembly is to contain one hundred and forty members, one hundred of whom are to be elected, and forty nominated; of the latter not less than twenty-six are to be officials. The numbers may be varied by rules subsequent to the Act, provided that at least five-sevenths of the Legislative Assembly shall be elected, and at least one-third of the rest officials. The Council of State is to sit for five years and the Lower House for three, although the Governor-General may dissolve them, or may extend their existence in special circumstances. Within six months of the dissolution of a chamber, another must meet. Every member of the executive council must be nominated as a member of one chamber of the Legislature.

The assent of both chambers is necessary for the passing of a Bill, and differences of opinion are to be settled by joint sessions. The Governor-General, however, may

certify that a Bill is essential and the Bill shall thereupon become law even without the assent of both chambers; while the Governor-General retains his existing power of making Ordinances and the Governor-General in Council his power of making Regulations. The Governor-General and Crown of course retain their powers of assent, reservation or disallowance of legislation.

(3) **Provincial Governments.**—The provisions in regard to provincial government hinge on the distinction between the different subjects of administration. Under the Act rules may be made for the classification of subjects as central and provincial, for the devolution of authority over provincial subjects to local governments, for the allocation of revenues to those governments and for the transfer from among the provincial subjects of certain subjects to the administration of the Governor acting with ministers appointed under the terms of the Act. Provincial subjects other than "transferred" subjects are termed "reserved" subjects. The Presidencies of Bengal, Madras and Bombay, and the provinces known as the United Provinces, Punjab, Bihar and Orissa, the Central Provinces, and Assam, are each to be governed, in relation to "reserved" subjects, by a Governor in Council, and in relation to "transferred" subjects by the Governor acting with ministers.

These ministers are to be appointed by the Governor; they are to be elected members of the local legislature, and must not be either members of the Governor's executive council or other officials. The Governor may also appoint from among the non-official members of the legislature a limited number of secretaries to assist members of the executive council and ministers—*i.e.* as in the case of the central government to act virtually as parliamentary under-secretaries. In "transferred" subjects the Governor is to

be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion. Thus a certain degree of responsible government is to be secured, which may be extended at will.

The Governor's legislative council is to consist of ministers of the executive council and members nominated or elected. The numbers vary in the different provinces, but not more than one-fifth are to be official members, and at least seven-tenths must be elected and non-official. Rules are to be made for the term of office and conditions of appointment of nominated members, and for the election of elected members on a broad franchise The legislative council is to sit for three years, unless dissolved by the Governor, who may extend the period to four years if he thinks fit; a fresh council must meet within six months of the dissolution of the last.

The provincial legislatures are empowered to legislate for the "peace and good government" of the province, and may repeal existing laws, with certain limitations which in the main concern central or "reserved" subjects. The provincial budget, on the recommendation of the Governor, is to be laid before the legislative council each year, and the council may refuse assent to a proposed grant or may reduce the amount, provided (1) that the demand does not relate to "reserved" subjects, (2) that the Governor shall have power in an emergency to authorise expenditure necessary for the safety or order of the province, and (3) that no proposals shall be submitted to the council in regard to contributions to the central government, interest or sinking fund charges on loans, expenditure prescribed by law, or salaries of persons appointed by the Imperial Government. Legislation may be vetoed by the Governor, returned for reconsideration or reserved for the consideration of the Governor-General,

who in turn may reserve it for the consideration of the Crown. When a legislature refuses to pass legislation on a "reserved" subject, the Governor may certify that the Bill is essential, and it thereby acquires the force of a provincial law, subject to the approval of the Governor-General.

(4) The Act contains a number of provisions in regard to the Indian Civil Service. The Secretary in Council may make regulations for the classification, methods of recruitment, conditions of service, etc., and may in respect of prescribed matters delegate the power of making similar regulations to the Governor-General in Council or to local Governors, or may authorise the Indian Legislature or local legislatures to make laws regulating the public services. A Public Service Commission is to be established in India, to consist of not more than five members, appointed by the Secretary in Council for a term of five years, and to exercise such control over the public services in India as is delegated to them by the Secretary in Council.

(5) At the end of ten years after the passing of the Act, the Secretary, with the concurrence of both Houses, is to submit to the King the names of persons appointed to act as commissioners for enquiring into the working of the system of government, the growth of education and the development of responsible institutions in India, and to report whether it is desirable to extend, modify or restrict the degree of responsible government then existing, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

(6) In the Native States a Council of Princes is to be established, to serve as a permanent consultative body.

APPENDIX.

CHAPTER XX.

DEVELOPMENT OF STATE ACTIVITIES.

§ 216. Prior to the middle of the nineteenth century State activities appear to have been directed mainly to the preservation of order and to the raising of revenue as circumstances demanded. Since then, however, a development in the extension of the principle of State interference has become increasingly manifest. This development received a great impetus during the recent war, and, although many of the functions then appropriated by the State have lapsed with the passing of the emergency, many others seem destined to be permanent. As both present arrangements and probable future extensions are necessarily matters of acute controversy, all that can be attempted in this chapter is to indicate some of the more important legislative enactments of recent date in which this development is apparent.

§ 217. **Acts Relating to Children.**—Important measures have been passed with the object of safeguarding the health and physique of school children. By the Education (Provision of Meals) Act, 1906, Local Education Authorities are empowered to assist voluntary efforts for feeding underfed school children. The Education (Administra-

tive Provisions) Act, 1907, imposed upon Local Education Authorities the duty of providing for the medical inspection of children in elementary schools.

By this Act Education Authorities are required to appoint a School Medical Officer, whose duty it is to examine the physical and mental condition of every child attending a public elementary school twice at least during his school course and to advise the Education Authority on the hygienic condition of the schools under its control. The provision of medical inspection has now by the Education Act of 1918 been extended to secondary, continuation and other schools under the control of local authorities.

In 1908 was enacted what has been termed the "Children's Charter." It is a measure intended to deal in a comprehensive manner with the protection of child life and health, but it is also concerned with the treatment of the juvenile offender. The various provisions of the Act deal with different forms of cruelty and neglect of children, with juvenile smoking, with allowing children to enter public-houses and the giving of intoxicants to children except under medical advice. The Act further provides for special courts and places of detention for juveniles under trial, whilst a children's magistrate is appointed in London.

Other Acts relating to children are the Employment of Children Act (1904), which prohibits street trading by children under the age of eleven, and gives power to local authorities to make by-laws regulating such trading up to the age of sixteen; and the Children (Employment Abroad) Act, 1913, which prevents children being taken out of the United Kingdom for the sake of performing in public for profit. Further regulations as to child employment are embodied in the Education Act of 1918.

§ 218. **Old Age Pensions Acts.**—With a view to dealing with the relief of the aged poor who are no longer able to

maintain themselves, the Old Age Pensions Acts were passed in 1908 and 1911. By the terms of these Acts, persons who are over 70 years of age, and who are of British nationality, are entitled to receive weekly financial assistance from the State. The amount of this assistance at first varied from 1s. to 5s. a week according to the amount of the private means that the pensioner possessed, but the great decrease in the value of money caused by the Great War has necessitated a considerable increase in these amounts. As a general rule this pension is paid through the Post Office. The administration of Old Age Pensions is under the control of the Ministry of Health.

§ 219. **National Insurance Act.**—The National Insurance Act, 1911, came into operation in January 1913, and has since been amended mainly in the direction of simplification by the National Health Insurance Act, 1918. In general terms it may be said that this Act affects all manual workers and all other employed persons with the exception of those whose salary is at a higher rate than £160 a year, or who are able to show that their employers have established a fund by which provision is made for benefits similar to those provided by the National Insurance Act. The benefits under the Act include medical benefit, sanatorium benefit, maternity benefit, and certain additional benefits. In order to secure these benefits, weekly contributions are made by the workers and the employers, supplemented by grants from the Imperial Exchequer. A central body of Commissioners has been created to undertake the general administration of the Act. There are four distinct groups of Commissioners, for England, Wales, Scotland, and Ireland respectively. For detailed work each county and county borough appoints an Insurance Committee, representative of the various interests affected by the Act; these Insurance Committees contain

also representatives of the medical officers and of the Insurance Commissioners.

The second part of the Insurance Act provides for insurance against unemployment in certain specified trades, *e.g.* mechanical engineering and the building trades. The funds to provide the unemployment benefits are derived from the workers, the employers, and the State. The Acts prescribe the conditions under which the benefits are to be available, and provide that in cases of dispute a court consisting of referees and insurance officers must be appointed to deal with the matter. This part of the Acts is administered by the Ministry of Labour through the Employment Exchanges.

§ 220. **The Labour Exchanges Act** of 1907 was intended to assist both employers and workers by supplying information to workers with regard to places in which their services are required. It also authorises loans towards the expenses of people travelling to take up positions that were secured for them through the instrumentality of the Labour Exchanges. Labour Exchange Offices have been established in every important centre of population, whilst sub-offices have been set up in other districts. A joint advisory committee is established in every principal centre, on which representatives of workmen and employers meet in equal numbers, under the chairmanship of an impartial permanent official. In 1916 the name Labour Exchange was altered to that of "Employment Exchange," a title which corresponds more accurately to its present function. In 1917 the Exchanges came under the control of the newly constituted Ministry of Labour.

§ 221. **Mental Deficiency Act, 1913.**—By the terms of this Act a Central Authority was established to deal with mentally infirm people who are not otherwise cared for or who, for some reason or other, may be considered to be a

danger to the community. County Councils and County Boroughs are required to form special committees to deal with this problem. Local Education Authorities are called upon to ascertain what children in their area are defectives. In those areas in which the Defective and Epileptic Children's Act, 1899, has been adopted the educatable feeble-minded children are to be sent to special schools. The powers and duties of the Local Education Authorities have been further extended by the Education Act of 1918 (see Ch. XVII.).

§ 222. **Maternity and Child Welfare.**—Recent years have seen a marked and growing interest in the preservation of infant life. Among enactments passed during late years which bear on the question is the Notification of Births (Extension) Act, 1915, which made notification compulsory and empowered the Local Government Board to defray half the cost of approved schemes for the care of expectant and nursing mothers and young children. The Maternity and Child Welfare Act of 1918 extended the functions of Sanitary Authorities, and gave the Local Government Board—now the Ministry of Health—power to aid schemes for the promotion of the midwifery service, for providing maternity hospital treatment, for improving the health of nursing mothers and young children by sending them to convalescent homes, for dealing with the physical welfare of children under five in need of hospital treatment, and for securing satisfactory conditions of home or institution life. In 1914 the Board of Education was empowered to make grants in aid of day nurseries and welfare centres, and the Education Act of 1918 permitted the Board to pay grants to education authorities or local bodies responsible for approved nursery schools. The Ministry of Health has now taken over the duties of the Board of Education in this respect.

§ 223. **Housing and Town Planning.**—As far back as 1890 the Central Government placed upon the Local Authorities the duty of inspecting and condemning unfit dwellings. Owing to the fact that no adequate provision was made to ensure the proper performance of this task, the authorities concerned failed in many cases to discharge their duty. To remedy this the Housing and Town Planning Act was passed in 1909. Its main provisions are: (1) Urban or Rural areas are empowered to build new cottages and houses; (2) Local Authorities are given power to purchase land compulsorily; (3) loans may be obtained to facilitate housing schemes; (4) Local Authorities will be compelled, if necessary, to exercise the powers they possess under the Act; (5) the Local Government Board may authorise the preparation of a town planning scheme for a particular neighbourhood.

The cessation of house-building activity during the war led to a serious shortage of accommodation and the Housing and Town Planning Act of 1919 was passed to deal with the situation. Previously local authorities had power to provide new houses, but generally speaking there was no compulsion for them to do so; but under the new Act every housing authority is required to ascertain how many houses are needed within its area, and to provide them so far as they will not be supplied by other means. A scheme must be submitted to the Ministry of Health for the provision of new houses; in default of action by local authorities the Ministry was authorised either to empower the County Council to act or itself to prepare schemes and private houses. Financial assistance will be given by the Government to local authorities when the cost of the schemes is in excess of a penny rate, and to Public Utility Societies which build houses for the working classes. Power is given to the Government to deal with by-laws

standing in the way of housing development. The Act has not yet proved as effective as was hoped.

§ 224. **Development and Road Improvement Funds Acts, 1909 and 1910.**—These Acts were intended for the purpose of promoting the economic development of the United Kingdom and for the improvement of roads. In order to carry out the first part of these measures, eight Commissioners with the assistance of a staff of paid officials are appointed to constitute a Central Authority. The Treasury is authorised to make certain grants and loans to the Development Commissioners for certain prescribed purposes, the chief of which are aiding and developing agriculture, forestry, reclamation and drainage of lands, general improvement of rural transport, and the development of fisheries.

To deal with the second part of the Act, a Road Board consisting of five members assisted by a paid staff was constituted. The Board was given the power of constructing new roads and of making grants to the existing Highway Authorities, who undertake to effect such improvements in the roads as will facilitate motor traffic. The Board is now incorporated in the Ministry of Transport, as the Roads Department.

§ 225. During the recent war the employment of truly national armies and the practical collapse of the distinction between combatant and non-combatant led to the assumption of extraordinary and unprecedented powers by the State, *e.g.* under the Ministry of Munitions Acts, in the control of food supplies and food prices, the control of merchant shipping, etc. Many of these powers have of course disappeared with the advent of peace, but others still remain and some of these may prove permanent. In a subject so controversial and so bound up with current political disputes, it is impossible to do more than indicate a few of the developments that still remain.

Among these may be mentioned the Rent Restrictions Acts, of which the last was passed in 1919, prohibiting or limiting the increase of rents of inhabited houses and regulating the powers of eviction of tenants possessed by the owner of a house. A much greater innovation was the Profiteering Act of 1919, which gave the Board of Trade power for a limited period to investigate prices, cost, and profit, to fix prices after enquiry, and to take proceedings against sellers who charged or demanded prices yielding an unreasonable profit, offenders being liable on conviction to a heavy fine or imprisonment. Local committees were to be set up with similar powers, appeal tribunals being established, while local authorities were to be permitted to trade.

§ 226. **Industrial Councils.**—An interesting and highly important development of public life, if not strictly included under the term of State activities, is the institution of Industrial Council to settle disputes between employers and employed on an amicable and reasoned basis, without resort to the disastrous weapon of a strike. This development is due to the labours of the Committee on Relations between Employers and Employed presided over by the Deputy Speaker, Mr. Whitley—hence the name of "Whitley" Councils frequently given to these bodies. According to the recommendations embodied in the valuable reports of this committee, National Joint Industrial Councils, District Councils and Works Committees have been set up in many of the more important industries and have already done a large amount of useful work. The recommendations of the committee have also been applied to the administrative departments of the Civil Service. The Ministry of Labour has established a special Department to give assistance and information where it may be desired, and to collect and codify the results of the activities and experience of Joint Industrial Councils.

The work already accomplished by these Joint Councils includes (1) agreements in many industries on questions of wages and hours; (2) setting up of machinery for undertaking conciliation duties; (3) appointment of committees to deal with education and training of apprentices; (4) formation in some industries of Welfare, and Statistical and Research Committees; (5) action taken by several councils to improve the organisation of both employers and workpeople.

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